

ORDINANCE #22-21

AN ORDINANCE OF THE CITY OF HAMILTON, TEXAS, AMENDING THE REGULATION OF OPERATION OF MOBILE FOOD VENDORS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR PUBLICATION

WHEREAS, the City Council of the City of Hamilton realizes that mobile food services are becoming more widely used in big cities and are even expanding to rural communities; and

WHEREAS, mobile food services may help to draw crowds at special events and promote tourism and economic growth; and

WHEREAS, the need to stay proactive in providing vendors optional locations to setup and sell is necessary; and

WHEREAS, the City Council of the City of Hamilton is desirous to allow mobile trucks to setup and sell food items in the parks and at the Municipal Airport; and

WHEREAS, allowing a permitting and permission process for mobile food vendors would provide a benefit to the MFV by expanding the area where businesses could be conducted and provide better services to the citizens of Hamilton; and

WHEREAS, collaborating with business owners to approve amendments to a Pilot Program codified in the City of Hamilton Ordinance is necessary for the welfare and continuation of mobile businesses.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE Hamilton, Texas

CHAPTER 16 - BUSINESSES

ARTICLE III. MOBILE FOOD VENDORS

Sec. 16-62. Definitions.

All food vendors will comply Texas Food Establishment Rules (TFER) established by the Texas Department of State Health Services as well as the City of Hamilton Ordinance.

- (A) *City* shall mean City of Hamilton.
- (B) *Food service establishment* shall mean businesses that sell edible goods and have been inspected and approved by the State, including commercial kitchens and commissaries, and shall specifically exclude accessory or self-serve retail food sales.
- (C) *Mobile* shall mean the state of being in active, but not necessarily continuous, movement.
- (D) *Mobile food vending unit (MFVU)* shall mean any business, which sells edible goods from a non-permanent (i.e. mobile) location within the City of Hamilton. The term shall include, but not be limited to:

- (1) *Mobile food trucks*: A self-contained motorized unit selling items defined as edible goods.
- (2) *Concession trailers*: A vending unit, which is pulled by a motorized unit and has no power to move on its own.
- (3) *Concession carts*: Mobile vending units that must be moved by non-motorized means.
- (E) *Sell* shall mean the act of exchanging a good for payment or in return for a donation.
- (F) *Stationary location* shall mean the position of the mobile food vendor when addressing the public for the purpose of sales and not in motion.
- (G) *BOD* means the value of the five-day test for Biochemical Oxygen Demand. See Chapter 62 Sec. 62-186.
- (H) *TSS* means the value of the Test for Total Suspended solids. See Chapter 62 Sec. 62-186

Sec. 16-63. Permit and application.

(A) *Permit application*. No person shall act as a mobile food vendor in the city without a permit issued by the city. Every permit, including those from the City, shall be displayed at all times in a conspicuous place where it can be read by the general public on the mobile food vendor's truck, concession cart, or concession trailer. A person shall complete an application for a permit to the city on forms furnished by the city and shall provide the following information:

- (1) Name, legal name of business or entity, mailing address, email, telephone number of the applicant; and photocopy of the applicant's state or federal issued photo identification card;
- (2) Name, legal name of business or entity, business address, telephone number, and email address of the owner if the owner is not the applicant;
- (3) The trade name under which the applicant conducts business;
- (4) Type of business organization or corporation as defined by state law;
- (5) Sales tax number with a copy of sales tax permit;
- (6) Anticipated locations of setup;
- (7) Vehicle and/or unit make, model, and license plate number;
- (8) Proof of motor vehicle insurance;
- (9) Description of product being sold;
- (10) Action plan to dispose of liquid waste, rubbish, and for providing restroom facilities for employees;
- (11) Copy of the contracted health inspector report issued to the mobile food vendor;
- (12) Any other information reasonably required by the City Administrator or his or her designee;

(B) *Fees*. All fees required under this section will be on file in the City Secretary's office.

(C) *Permit decisions*.

- (1) Permits shall be issued for a time period, not to exceed one year; or, may be stated to expire on a specific date.
- (2) Permits are required to be renewed prior to the expiration date.

- (3) A new permit application is required to be submitted within 15 days of the following, whereupon the previous permit will be voided and the previous permit canceled:
 - (a) When ownership of the operating entity is changed; or
 - (b) The City determines that operations or management methods are no longer adequately described by the existing permit application.
- (4) Permits are not transferrable.
- (D) *Suspension or revocation of permit.* A permit may be revoked by the city for any violation of this section.

Sec. 16-64. Location and stationary restrictions.

(A) *Location regulations.*

- (1) Mobile food vendors are permitted in commercial, agricultural and RS-2 zoning districts.
- (2) Mobile food vendors are permitted in any other retail commercial business as determined by the City Administrator or his designee; and
- (3) Mobile food vendors are permitted on city property:
 - (a) with permission from the City Administrator or his or her designee; and
 - (b) during special events; or weekends
 - (c) or at specific city properties as determined by the City Administrator or his or her designee. These properties may include but not limited to:
 - 1. Sports Complex
 - 2. Airport
 - 3. Fairgrounds
 - 4. Parks
- (4) Mobile Food Vending Units located on private property-must be located in a zoning district that allows restaurants.
- (5) MFVU on Construction Sites. For subdivisions or sites in any zoning districts that are actively under construction and have not yet been issued a Certificate of Occupancy, a MFVU may operate for less than one (1) hour.

(B) *Stationary restrictions.* A mobile food vendor shall not remain on premises and/or conduct sales at a stationary location:

- (1) In congested areas where the operation impedes vehicular or pedestrian traffic or where it impedes access to the entrance of any adjacent building or driveway.
- (2) Within a primarily residential area or within 25 feet of a parcel or lot in which a single-family residence is located, other than during special events sponsored by a department of the City of Hamilton.
- (3) In public parking spaces, right-of-way and/or easements owned by the City of Hamilton without written approval by the City Administrator or his or her designee.
- (4) In a designated bike lane.
- (5) Within the boundaries of City sponsored event unless approved by permit with the City Administrator or his or her designee
- (6) Within 400 feet of any special events entrance.

(7) The MFVU and any parking areas used by the vendor or its customers, should be located on a paved surface, or an alternative all-weather surface. Where providing paved or all-weather surface would be impractical or not provide a public benefit, alternative methods may be approved. Alternative methods may include but are not limited to portable spill berms, environmentally sensitive materials, and other methods to mitigate property damage and environmental hazards.

(8) All MFVU operating in a permanent location with a connection to city sewer shall be tested in accordance with Chapter 62, Division 2 – Industrial Wastes. Testing shall be for BOD and TSS and if required, a surcharge assessed to the responsible party's utility bill.

Section 16-65 Additional Requirements

(A) *Mobile food vendor requirements.*

- (1.) No person shall act as a Mobile Food Vendor in the City without a permit issued by the City.
- (2.) Each MFVU shall have displayed, at all times in a conspicuous place where it can be read by the general public, the City of Hamilton permit under this article and permit number.
- (3.) All MFVUs must meet all applicable state and local laws and regulations, including but not limited to the Rules.
- (4.) All MFVUs must meet all applicable laws regarding Mobile Food Vendors as described in the current State Fire Code.
- (5.) Each unit shall be equipped with a trash receptacle and litter shall be disposed of in accordance with the city's solid waste ordinance. All solid waste and recyclables shall be bagged. Receptacles shall not be overfilled. All disturbed areas must be cleaned following each stop at a minimum of 20 feet of the sales location.
- (6.) If liquid waste results from food processing of a mobile food vendor's truck, concession cart, or concession trailer, the waste shall be contained in a permanently installed retention tank located on the vending unit. However, if the vendor has attained a city sewer connection utilizing an inline grease trap which is tested in accordance with Chapter 62, Division 2, the waste may be disposed into the city system.
- (7.) Liquid waste, solid waste, and/or recyclables shall be removed from a mobile food vendor's truck, concession cart, or concession trailer at a disposal site approved by the city or by a city permitted waste transporter. Removal of waste shall be in a manner that a public health hazard or nuisance is not created. Records of removal and disposal shall be provided to staff upon request.
- (8.) The mobile food vendor will be subject to inspection by the city upon permit application and be subject to random inspections mandated by the Texas Food Establishment Rule and upon reissuance of the permit. Inspections must pass all fire and health inspections. Failure to pass any inspection at any time will result in cancellation of permit. With the cancellation of any permit, an applicant must submit a new application and fee.
- (9.) MFVUs shall be self-sufficient for water and sewer utilities. Use of water and wastewater hoses to provide utility service to mobile vending unit is prohibited without a water backflow prohibiting device. Extension cords may be used for electrical service if the equipment and connection(s) used between the vending unit and supplying source pose no threat to public safety (i.e. personal injury or fire).
- (10.) Signage must be on the truck or trailer and mounted flush to the surface of the unit.

(B) *Inspections.*

- (1.) The City may inspect a MFVU during regular business hours and at other reasonable times to determine compliance with this ordinance.
- (2.) After conducting an inspection, the City shall inform the Vendor of findings.

(3.) If a violation is found, the City shall:

(a.) close the unit; or

(b.) prescribe a reasonable time period for correction of violations. Re- inspections at prescribed time intervals will be conducted to determine whether required corrections have been made.

(C) *Penalty.* A violation of this ordinance is considered a violation pertaining to fire safety, zoning, public health and/or sanitation and is punishable by a fine not to exceed two thousand dollars (\$2,000.00) per occurrence.

Sec. 16-66. Offenses.

- (A) It shall be unlawful for an individual to sell edible goods while displaying a valid permit issued by the City in the name of another individual, organization, or entity outside of an employment relationship.
- (B) It shall be unlawful for any individual directly or through an agent or employee to sell goods within the corporate limits of the city after the expiration of the permit issued by the City under this section.
- (C) It shall be unlawful for an individual directly or through an agent or employee to misrepresent on the permit affidavit any acts that are regulated under this section.
- (D) It shall be unlawful for any individual directly or through his agents or employees to represent that the issuance of a permit by the City constitutes the city's endorsement or approval of the product for sale.
- (E) It shall be unlawful to operate a mobile food vendor operation that is not in compliance with the Texas Food Establishment Rules as amended from time to time.

Sec. 16-67. Penalty Provision.

Any person, firm, entity or corporation who violates any provision of this Ordinance, as it exists or may be amended, shall be deemed guilty of a Class C misdemeanor, and upon conviction thereof, shall be fined a sum not exceeding two thousand Dollars (\$2000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City of Hamilton from filing suit to enjoin the violation. Hamilton retains all legal rights and remedies available to it pursuant to local, state, and federal law.

Sec. 16-68. Savings/Repealing Clause.

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

Sec. 16-69. Severability.

Should any section, subsection, clause or phrase of this ordinance be declared unconstitutional or invalid by any court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect.

Sec. 16-70. Effective Date.


This Amendment to the Ordinance shall be effective November 12, 2021 and publication as required by law.

PASSED AND APPROVED on this November 12, 2021

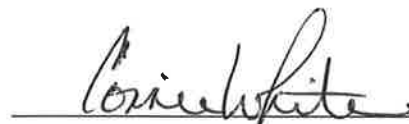
ATTESTED BY:


Misty Boatwright, City Secretary

APPROVED:


Rodney Craddick, Mayor

APPROVED AS TO FORM:


Connie Z. White, Attorney