

ORDINANCE NO. 1071

AN ORDINANCE AMENDING CHAPTER 4 OF THE CODE OF ORDINANCES OF THE CITY OF LEVELLAND, TEXAS BY ADDING ARTICLE 4.1500 ENTITLED “MOBILE FOOD SERVICE VENDORS” ESTABLISHING A PERMITTING AND INSPECTION PROCESS FOR ALL MOBILE FOOD SERVICE VENDORS PROVIDING FOOD SERVICE TO THE PUBLIC WITHIN THE MUNICIPAL LIMITS OF LEVELLAND; PROVIDING FOR A PENALTY NOT TO EXCEED \$2000.00 FOR VIOLATIONS OF THE ORDINANCE; PROVIDING AN EFFECTIVE DATE; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER AND PROVIDING FOR PUBLICATION.

WHEREAS, the City Council for the City of Levelland, Texas pursuant to the constitution and laws of the State of Texas including, but not limited to, Article 11, Section 5 of the Texas Constitution as a home rule city, may set forth ordinances and regulations and exercise its police powers for the public health, safety, morals, or general welfare of the citizens of the City of Levelland; and

WHEREAS, the City Council of the City of Levelland finds it necessary to establish a permitting process for mobile food vendors desiring to prepare and sell food for human consumption to the public from mobile food vehicles and trailers within the municipal limits of the City of Levelland in order to ensure appropriate safety regulations and applicable state health and safety laws and regulations are followed; and

WHEREAS, the City Council of the City of Levelland finds that the following amendment to the Code of Ordinances, 1997, City of Levelland, Texas, adding Article 4.1500 governing mobile food service vendors is necessary and proper to protect the health, safety and general welfare of the citizens of Levelland and a proper exercise of its police power.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEVELLAND, TEXAS, THAT:

SECTION 1. The recitals set forth above are hereby found to be true and correct and are incorporated into the body of this Ordinance for all purposes as if fully set forth herein.

SECTION 2. Chapter 4 of the Code of Ordinances, 1997, City of Levelland Texas, Texas is hereby amended by adding Article 4.1500, “Mobile Food Service Vendors” to read as follows:

“ARTICLE 4.1500 MOBILE FOOD SERVICE VENDORS

Sec. 4.1501 Purpose.

The purpose of this ordinance is to establish regulations governing mobile food service vendors, also referred to as food trucks, and the use of property or a tract of land by food trucks and are intended to promote the health, safety, and welfare of the public, and to protect the property rights of the owners of land located adjacent to and within the vicinity of properties containing a food truck or an operation site.

Sec. 4.1502 Definitions.

As used herein the following terms will have the definitions herein:

Commissary location. An established location where food service providers can prepare and store their food, as well as a location to store a mobile food unit while not in use.

Food, edible goods. All food products designed for human consumption including raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

Food service establishment. Any business that sells food from a fixed location including commercial kitchens and commissaries, and is inclusive of those businesses that fall within the definition of a “food establishment” as defined by Texas Food Establishment Rules adopted by the Texas Department of State Health Services and as promulgated in 25 Texas Administrative Code Chapter 228 as amended.

Health Inspector. Any employee, contractor or agent of any regulatory authority of the State of Texas or a political subdivision thereof that is licensed, trained or certified to inspect food service establishments on behalf of the city.

Mobile. The state of being in active, but not necessarily continuous, movement; capable of being moved and not permanently fixed or placed.

Mobile food vendor. Any person that sells edible goods from a mobile unit within the city. The term does not include a person that sells from a mobile unit individually pre-packaged frozen desserts including ice cream, frozen yogurt, frozen sherbet or other frozen dietary dairy desserts.

Mobile food unit, mobile unit, food truck, mobile food truck. Means and includes:

- (1) A mobile food truck: a self-contained motorized unit from which a mobile food vendor offers for sale or sells edible goods to the public;
- (2) A concession cart: a mobile vending unit that must be moved by non-motorized means from which a mobile food vendor offers for sale or sells edible goods to the public;
- (3) A concession trailer: a vending unit that is pulled by a motorized unit and has no power to move on its own from which a mobile food vendor offers for sale or sells edible goods to the public;
- (4) A temporary concession booth: A stationary vending unit that is temporary and can be dismantled and moved from which a vendor offers for sale or sells edible goods to the public; or
- (5) A “Mobile Food Unit” defined by Texas Food Establishment Rules adopted by the Texas Department of State Health Services and as promulgated in 25 Texas Administrative Code Chapter 228 as amended.

Permit. The document issued by the regulatory authority which authorizes any activity, operations, or employment pursuant to or covered by the rules or this ordinance, whether titled or characterized as a permit, license, certificate, or otherwise.

Stationary location. Position of the mobile unit when not in motion and addressing the public for the purpose of sales.

Sec. 4.1503 Mobile Food Vending Permit

(a) General. No person shall operate a mobile food unit who does not have a valid permit, issued to them by the City of Levelland. Only a person who complies with the requirements of these rules shall be entitled to receive or retain such a permit. Permits are not transferable. A valid permit shall be displayed in plain view to the public in every mobile food unit.

(b) Issuance of Mobile Food Vending Permit.

- (1) Any person desiring to operate a mobile food unit shall make written application for a permit on forms provided by Building Permit and Inspection

Department of the City of Levelland. Such application shall include, at a minimum, the following:

- (A) the name and address of each applicant;
- (B) the location and type of the proposed mobile food unit;
- (C) a copy of the driver's license of the applicant; and
- (D) the signature of each applicant.

(2) Prior to the approval of an application, the health inspector and fire marshal shall inspect the mobile food unit to determine compliance with requirements of this article and any other applicable regulatory rule, provision or ordinance.

(3) At the time the application is made, the applicant will pay the application fee as specified in Appendix A, Article 8.000.

(4) The mobile food vending permit issued by the City of Levelland shall be valid for one (1) year from the date of permit issuance and is not transferable.

(c) Grounds for denial of permit application. The city shall refuse to approve issuance or renewal of a permit under this article to any applicant for one or more of the following reasons:

- (1) Any failure to provide the information required by this article;
- (2) A determination by the city that inaccurate, erroneous or incomplete information has been submitted;
- (3) A false or misleading statement as to a material matter made in an application for a permit;
- (4) The applicant has committed critical and/or repeated violations of this article or any other applicable regulatory rule, provision or ordinance;
- (5) The applicant interferes with the health inspector in the performance of the health inspector's duties; Has previously , HasRefusal or failure to pay the state occupation tax on any amusement redemption machine.
- (6) Refusal or failure to pay the correct permit fee amount.

(d) Exemptions.

(1) Any regulated activity which is conducted by a nonprofit organization as an annual or occasional fund raising or fellowship event shall be exempt from the requirement to obtain a permit. However, the activity shall still be subject to compliance with all rules and is subject to inspection.

(2) Any mobile food unit meeting the following conditions is required to obtain a permit but is exempt from paying any permit fee under this article:

- (A) Operated by a nonprofit organization in connection with the organization's principal activity, such as concession stands operated by volunteers at youth athletic leagues; or
- (B) Operated by a nonprofit organization as a service to its members or to some identifiable group, such as shut-ins or persons suffering from some disabling condition.

Sec. 4.1504

Inspections

(a) Inspection. The health inspector may inspect any permitted mobile food truck operating within the municipal limits of the City of Levelland.

(b) Access. The health inspector, after proper identification, shall be permitted to enter any mobile food truck during the hours of operation or at any reasonable time, for the purpose of making inspections to determine compliance with the rules and this ordinance. The health inspector shall be permitted to examine the records of the establishments to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed. Refusal of access is sufficient cause to immediately suspend any permit.

(c) Imminent Health Hazard. If an imminent health hazard exists, such as complete lack of refrigeration, contaminated food or sewage backup into the mobile food truck, the mobile food truck shall immediately cease food service operations. Operations shall not be resumed until such time as a re-inspection by the health inspector determines that conditions responsible for the requirement to cease operations no longer exist.

Sec. 4.1505 Operation Sites and Distance Regulations

(a) A mobile food vendor shall not conduct business a SF-1, SF-1-CA, SF-2, Multi-1, Multi-2, Multi-3 or Multi-4 zoning district. Additionally, a mobile food vendor shall not conduct business within one hundred (100) feet of a residence or apartment complex.

(b) A mobile food vendor shall not conduct business within one hundred and fifty (150) feet of the primary entrance of an open and operating food service establishment. This buffer may be reduced upon receiving written, notarized permission from the owner of said establishment.

(c) A mobile food vendor shall not locate closer than ten (10) feet to any property line. The mobile food vendor shall not locate a mobile unit in such a manner or location that obstructs or causes to be obstructed the passage of any sidewalk, street or alley or any other public place, by causing people to congregate at or near the mobile unit.

(d) A mobile food vendor shall not locate on any private property without written permission to do so and must comply and leave the property if asked to leave by the property owner. A copy of the owner's written and notarized permission to operate in a specific location signed by the owner shall be kept within the mobile unit at all times.

(e) A mobile food vendor shall not operate on any public right-of-way and shall not block access to any parcel, alley or sidewalk unless prior written approval has been received from the City of Levelland separate and apart from the permit authorized in this ordinance or such operation is in conjunction with or part of a permitted special event.

Sec. 4.1506 Hours of Operation

Mobile food vendor shall only be allowed to operate between the hours of 6:00 a.m. and 12:00 a.m.

Sec. 4.1507 General Mobile Food Vendor Requirements

(a) Each mobile food truck shall be equipped with a portable trash receptacle and shall be responsible for the proper disposal of solid waste and waste water in a sanitation facility legally accessed by the mobile food vendor and in such a way that a public health hazard or nuisance is not created.

- (b) The mobile food unit must have a sign or other identification on at least two (2) sides of the unit with lettering that is at least three (3) inches or greater that includes the name of the mobile food unit and a general description of the items being sold.

- (c) All personnel handling food during the operation of the mobile food unit must have their certified food manager/basic food handler license.
- (d) There must be bathroom availability for employees working in the mobile food unit either self-contained within the mobile food unit or located on the property where the mobile food unit is operating. Permission to use the bathrooms located on the private property where the mobile food unit is located must be included in the written permission to occupy the private property for mobile food unit operations.
- (e) No noise which is loud or obnoxious shall project from the mobile food unit.
- (f) A mobile unit shall not block any fire lane or drive aisle or obstruct public traffic visibility.
- (g) Dumping, or the improper disposal, of the waste water or food preparation byproducts onto the ground, pavement or other surface or other system not designed for that specific use is strictly prohibited and may result in the immediate revocation of all permits of the mobile food truck, immediate cessation of operation, performance of necessary remediation and the issuance of citations and fines.
- (h) It shall be unlawful for any person to operate as a mobile food vendor without complying with the Texas Food Establishment Rules adopted by the Texas Department of State Health Services and as promulgated in 25 Texas Administrative Code Chapter 228 as amended.
- (i) The requirements outlined in this section are in addition to any requirements issued by the health inspector designed to protect the public health and safety and consistent with the Texas Food Establishment Rules and this article.

Section 4.1508 Fire Safety Regulations

- (a) A mobile food vendor shall comply with all fire safety regulations established by the fire marshal including, but not limited to, the following:
 - (1) At least one (1) 2A:10B:C fire extinguisher with annual inspection tag or receipt indicating purchase within the past year;
 - (2) At least one (1) Class K fire extinguisher if cooking with solid fuels, vegetable oil or animal fats with annual inspection tag or receipt indicating purchase within the past year;
 - (3) A vent hood installed and operational with a current (bi-annual) inspection tag;
 - (4) Vent hood requirements:
 - (A) A type 1 vent hood (vent hood without automatic fire suppression) is required if cooking within the food unit is only producing steam.
 - (B) A type 2 vent hood (vent hood with automatic fire suppression) is required if cooking within the food unit is producing grease laden vapors. Examples would include cooking by deep frying, cooking on a flat top grill or cooking on a cooktop stove.
 - (5) All compressed gas containers are secured outside of the passenger area, have one (1) or more restraints to a fixed object, and at least ten (10) feet away from an open flame, generator or other combustible material;

- (6) All gas valves, hoses and connectors that have passed a pressure test within the previous twelve (12) months; and
 - (7) Extension cords may not be used for permanent wiring for the supply of electricity.
- (b) Temporary concession booths must have:
- (1) At least one (1) 2A:10B:C fire extinguisher with annual inspection tag or receipt indicating purchase within the past year; and
 - (2) At least one (1) Class K fire extinguisher if cooking with solid fuels, vegetable oil or animal fats with annual inspection tag or receipt indicating purchase within the past year.

Sec. 4.1509 Suspension/Revocation of Permit.

- (a) Suspension Without Prior Notice. The health inspector may immediately suspend any permit to operate a mobile food unit without prior notice if the health inspector determines the operation of the mobile food unit constitutes an immediate and substantial hazard to public health. When a permit is suspended, all food service activity at the mobile food unit shall immediately cease.
- (b) Suspension with Notice. The health inspector may suspend any permit issued to operate a mobile food unit when the holder of the permit or the person in charge of the mobile food unit does not comply with the requirements of this article and any other applicable regulatory rule, provision or ordinance, or if the operation of the mobile food unit does not comply with the requirements of this article and any other applicable regulatory rule, provision or ordinance after receiving notice of the violation from the health inspector in accordance with subsection (e).
- (c) Service of Notice/Length of Suspension. Whenever a permit is suspended, the holder of the permit or the person in charge of the mobile food unit shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the city secretary of the city by the holder of the permit within ten (10) days of receiving the notice of suspension. If no written request for hearing is filed or if the suspension is upheld after appeal, the suspension remains effective until the holder of the permit complies with the rules of this article and any other applicable regulatory rule, provision or ordinance and the reasons for suspension no longer exist.
- (d) Appeal of Suspension. A holder of a permit may appeal any suspension of a permit by filing, in writing, a request for a hearing with the city manager within ten (10) days for receiving the notice of suspension. The suspension remains in effect while an appeal is pending. Whenever a permit is suspended and a request for hearing is made by the holder of the permit, the hearing shall be conducted within twenty (20) days of receipt of a request for a hearing.
- (e) Revocation of Permit. The health inspector may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules or for interference with the health inspector in the performance of its duties. Prior to revocation, the health inspector shall notify the holder of the permit, or the person in charge, in writing of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten (10) days following service of such notice unless a written request for a hearing is filed with the health inspector by the holder of the permit within such ten (10) day period. If no request for hearing is filed within the ten (10)

day period, the revocation of the permit becomes final. If a request is filed, the city manager shall conduct the hearing within twenty (20) days of receipt of a request for a hearing.

(f) Service of Notices. A notice provided for in the rules or this article is properly served when it is delivered to the holder of the permit or the person in charge of the mobile food unit, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit or delivered to the premises of the mobile food unit. A copy of the notice shall be filed in the records of the health inspector.

(g) Appeal Hearings. Persons wishing to appeal from any decision of the health inspector may request a hearing to be conducted by the city manager or the city manager's designee at the time and place designated by the city manager. Such hearings will not be required to follow formal rules of procedure or formal rules of evidence, but will be conducted in order to give a fair consideration to the appellant. The city manager may obtain input from such other officials as he deems necessary in order to reach a just result. The decision of the health inspector will be upheld unless the city manager determines that the health inspector's decision is clearly erroneous.

(h) Application After Revocation. Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit.

Sec. 4.1510 Penalties and Injunction

(a) Any person violating or failing to comply with a provision of this ordinance, and any person who is the permit holder of or otherwise operates a mobile food unit that does not comply with the provisions of the rules or of this ordinance, shall be deemed guilty of a misdemeanor violating an ordinance governing public health and safety and upon conviction thereof shall be subject to a fine in accordance with the general penalty provision found in Section 1.109 of this code for each offense, or the maximum fine established by applicable state law, whichever is greater. Each day during which a violation occurs is a separate offense. Proof of a culpable mental state is not required for a conviction of an offense under this article.

(b) In addition to the above and foregoing penalties, the City of Levelland may seek to enjoin violations of the rules and of this article and obtain such other and further relief necessary to remedy any violations, as appropriate."

SECTION 3. Chapter 4 of the Code of Ordinances, 1997, City of Levelland Texas, Texas is hereby amended by amending § 4.901 "Definitions" as follows (for reference purposes, amended portions are indicated as follows: deletions – strikeout; new additions - underlined and italicized):

Food, Food Establishment, Food Processing Plant, ~~Mobile Food Unit~~, Roadside Food Vendor and Temporary Food Service Establishment. As used herein these terms shall have the same meaning as that term is defined by Texas Food Establishment Rules adopted by the Texas Department of State Health Services and as promulgated in 25 Texas Administrative Code chapter 228 as amended.

Food Service Establishment. As used herein shall include food establishment, food processing plant, ~~mobile food unit~~, roadside food vendor and temporary food service establishment.

SECTION 4. Chapter 4 of the Code of Ordinances, 1997, City of Levelland Texas, Texas is hereby amended by amending subsection (d)(1)(E) of § 4.903 "Inspections" Definitions" as follows (for reference

purposes, amended portions are indicated as follows: deletions – strikeout; new additions - underlined and italicized):

- (E) In the case of temporary food service establishments and roadside food vendors, ~~and mobile food units~~ all violations shall be corrected within 24 hours. If violations are not corrected within 24 hours it shall immediately cease food service operations until authorized to resume by the regulatory authority.

SECTION 5. Penalty. Any person found in violation of any provision of this Ordinance shall be shall be guilty of a misdemeanor and upon conviction thereof shall be fined in accordance with the general penalty provision found in Section 1.106 of the Code of Ordinances, 1997, City of Levelland, Texas.

SECTION 6. Effective Date. This ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

SECTION 7. Repealed. All other terms and provisions of the Code of Ordinances, 1997, City of Levelland, not in conflict herewith and not hereby amended shall remain in full force and effect.

SECTION 8. Severability. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Levelland, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

SECTION 9. Publication. The City Secretary of the City of Levelland is hereby authorized and directed to cause publication of the descriptive caption of this Ordinance as an alternative method provided by law.

Passed and approved on first reading this ____ day of _____, 2023.

Passed and approved on second reading this ____ day of _____, 2023.

Barbra Pinner
Mayor

ATTEST:

Andréa Corley, City Secretary TRMC