

**ORDINANCE NO. 231205-01**

**REGULATIONS OF FOOD ESTABLISHMENTS**

**AN ORDINANCE OF THE CITY OF BIG LAKE, TEXAS, REGARDING THE REGULATION OF FOOD ESTABLISHMENTS INCLUDING: FOOD ESTABLISHMENTS, TEMPORARY FOOD ESTABLISHMENTS, MOBILE FOOD UNITS, AND ROADSIDE FOOD VENDOR REQUIREMENTS WITHIN THE CITY LIMITS OF BIG LAKE, TEXAS; REPEALING ORDINANCE #200505-1, PROVIDING FOR: A FINDINGS OF FACT; A POPULAR NAME AND NUMBER SYSTEM; PURPOSE; DEFINITIONS; REQUIREMENTS; INVESTIGATION AND NOTICE OF VIOLATIONS;; ENFORCEMENT INCLUDING; SEVERABILITY; SAVINGS CLAUSE; EFFECTIVE DATE AND PROPER NOTICE AND MEETING.**

**WHEREAS**, the City Council of the City of Big Lake ("City") desires to safeguard the health, safety, and general welfare of the City, and:

**WHEREAS**, pursuant to section 51.001, Texas Local Government Code, the City Council is authorized to adopt an ordinance that is for good government, peace or order of the City and is necessary for carrying out a power granted by law to the City; and

**WHEREAS**, pursuant to section 51.012, Texas Local Government Code, The City Council may adopt an ordinance, not inconsistent with state law, that is necessary for the government, interest, welfare or good order of the City as a body politic; and

**NOW THEREFORE**, be it ordained by the City Council of the City of Big Lake, Texas, County of Reagan, State of Texas that:

**SECTION 1.0: FINDINGS OF FACT**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Big Lake and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

**SECTION 2.0: POPULAR NAME**

This Ordinance shall be commonly referred to as "Food Establishments Regulations"

**SECTION 3.0: PURPOSE**

The purpose and intent of this Ordinance is to establish policies and guidelines for enforcement of food establishment regulations located within the City limits.

**SECTION 4.0: ADOPTION OF TEXAS FOOD ESTABLISHMENT RULES**

The City of Big Lake, Texas adopts by reference the provisions of the current rules or rules as amended by the Executive Commissioner of the Health and Human Services Commission found in 25 Texas Administrative Code: 228, Sections 1 through 246 regarding the regulation of food establishments in this jurisdiction.



## **SECTION 5.0: DEFINITIONS**

Unless the context requires otherwise, the following terms and phrases, as used in this Ordinance, shall have the meanings hereinafter designated:

- 5.1 **AUTHORIZED AGENT OR EMPLOYEE:** the employees of the regulatory authority.
- 5.2 **CITY:** the City of Big Lake, Texas, a municipal corporation and political subdivision within the County of Reagan, within the State of Texas.
- 5.3 **CITY COUNCIL:** the governing body of the City of Big Lake, Texas.
- 5.4 **EDIBLE GOODS:** all food products designed for human consumption.
- 5.5 **FOOD SERVICE ESTABLISHMENT:** any business that sells edible goods from a fixed location, a retail food store, a temporary food establishment, a mobile food truck, and/or a roadside food vendor.
- 5.6 **FOOD TRUCK COURT (aka-FOOD TRUCK PARK OR FOOD TRUCK PLAZA):** any commercial establishment designed specifically to accommodate two (2) or more mobile food vendor units with water, sewer, and electrical hook ups and also possesses a current food truck court permit from the City.
- 5.7 **MOBILE:** the state of being in active, but not necessarily continuous movement; capable of being moved and not permanently fixed or placed.
- 5.8 **MOBILE FOOD VENDOR:** any person that sells edible goods from a mobile unit within the city, except a person who has been issued a permit to operate an ice cream sales vehicle.
- 5.9 **MOBILE UNIT:**
  - a) a mobile food truck: self-contained motorized unit from which a mobile food vendor offers for sale or sells edible goods to the public;
  - b) 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; or;
  - c) 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.
- 5.10 **REGULATORY AUTHORITY:** the City of Big Lake.
- 5.11 **STATE RULES:** the state rules found at 25 Texas Administrative Code, Chapter: 228, Sections 1 through 246. These rules are also known as the Texas Food Establishment Rules.
- 5.12 **STATIONARY LOCATION:** position of the mobile unit when not in motion and addressing the public for the purpose of sales.

## **SECTION 6.0: PERMITS AND EXEMPTIONS**

- 6.1 A person may not operate a food establishment without a health permit issued by the regulatory authority, a Food Management Certification (8 hrs course) and a valid Tax ID.

- 6.2 Permits are non-transferable from one person to another or from one location to another location, except as otherwise permitted by this ordinance. A valid permit must be posted in or on every food establishment regulated by this ordinance.
- 6.3 A food establishment operated solely by a non-profit organization is exempt from the permitting requirements of this ordinance, but is not exempt from compliance with state rules. The regulatory authority may require any information necessary to determine whether an organization is nonprofit for purposes of this exemption.

**SECTION 7.0: PERMIT AND FEES**

- 7.1 Any person desiring to operate a food establishment must make a request for a permit on forms provided by the regulatory authority. The application must contain the name and address of each applicant, the location and type of the proposed food establishment, signed current Ordinance verifying acknowledgement of receipt of Ordinance, and the applicable fee. An incomplete application will not be accepted. Failure to provide all required information, or falsifying information required may result in denial or revocation of the permit. Renewals of permits are required on an annual basis and the same information is required for a renewal permit as for an initial permit.
- 7.2 Prior to the approval of an initial permit or the renewal of an existing permit, the regulatory authority shall inspect the proposed food establishment in accordance with the City of Big Lake Retail Food Establishment Inspection Report and Section 10.0 of this ordinance to determine compliance with state laws and rules. A food establishment that does not comply with state laws and rules will be denied a permit or the renewal of a permit.
- 7.3 The following fee schedule applies to permits issued under this ordinance.

**Permit Fee Schedule:**

Health Permit - Dine In	\$ 100.00
Health Permit - Carry Out	\$ 50.00
Itinerant Merchant - Daily Permit	\$ 25.00
Itinerant Merchant - Weekly Permit	\$ 100.00
Itinerant Merchant - Yearly Permit	\$ 300.00

**SECTION 8.0 PERMITTED LOCATIONS AND DISTANCE REGULATIONS**

- 8.1 Subject to the provisions of this article, mobile food vendors shall be permitted to conduct business in the following zoning districts: Commercial and Industrial
- 8.2 Mobile food vendors shall comply with the following distance regulations:
  - a) A mobile food vendor shall not conduct business within any residential or apartment zoning district. A mobile food vendor shall not conduct business within two hundred (200) feet of the boundary line of any residential or apartment zoning district.



- b) A mobile food vendor shall not conduct business within two hundred (200) feet of the primary entrance of an open and operating permanent structure food service establishment. This buffer may be reduced upon receiving written, notarized permission from the owner of said establishment.
- c) If a new permanent structure food service establishment opens within the two hundred (200) foot buffer of a mobile food vendor as set forth in subsection (2) above, the mobile food vendor must receive written, notarized permission from the new establishment's owner to continue operating at that location.
- d) A mobile food vendor shall not locate closer than fifteen (15) feet to any front property line (adjacent to any street) or any rear property line (adjacent to any alley). 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.
- e) 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.

#### **SECTION 9.0: HOURS OF OPERATION**

No mobile food vendor shall operate between the hours of 1:00 a.m. and 5:00 a.m.

#### **SECTION 10.0: MOBILE FOOD VENDOR REQUIREMENTS**

The following regulations shall apply to mobile food vendors:

- 10.1 The mobile food vendor shall be responsible for proper disposal of solid waste and shall be required to obtain sanitation services through the City of Big Lake to ensure proper solid waste disposal. Each mobile food vendor shall be required to set up an account with the City of Big Lake for a solid waste receptacle (dumpster) and provide a \$75.00 Deposit. Each mobile food vendor will be billed at a monthly rate of \$25.00 for sanitation services.
- 10.2 The mobile food vendor shall be responsible for proper disposal of wastewater in compliance with the Code of Ordinances of the City. If the mobile food vendor elects to tie-in to an existing sewer service, they will be billed at a monthly rate of \$10.00 per month. No additional deposit shall be required.
- 10.3 Standard tapping fees will apply and existing deposit amounts will be required for mobile food vendors wishing to set up full utility services with the City of Big Lake, including water, sewer and sanitation.
- 10.4 No noise which is loud or noxious shall project from the mobile unit.
- 10.5 A mobile unit shall not block any fire lane or drive aisle.
- 10.6 No mobile unit may park on a lot without a primary structure, unless the mobile unit is conducting business in the central business district. Any parking lot in the central business district occupied by a mobile unit shall comply with the Section 8.2(b.) above.



10.7 No mobile food vendor shall conduct business in the public right-of-way and shall not block access to any parcel or alley.

10.8 No mobile unit shall locate in such a manner as to cause any obstruction within a visibility triangle.

- a) Intersection visibility triangle shall mean a triangle sight area, at all intersections, which shall include that portion of public right-of-way and any corner lot within a triangle formed by a diagonal line extending through points on the two (2) property lines twenty-five (25) feet from the street corner intersection of the property lines (or that point of intersection of the property lines extended) and intersecting the curb lines.
- b) It shall be unlawful for any person to operate as a mobile food vendor without complying with the Texas Food Establishment Rules as amended from time to time.
- c) A mobile unit shall be inspected by the City's Code Enforcement Officer prior to the issuance of a mobile food vending permit in accordance with Section 3 B. above. The inspection shall also include the following:
  - 1) A valid driver's license and current Texas Department of Public Safety license plates and state inspection sticker, except for a concession cart which is not required to have license plates or an inspection sticker. The mobile unit must be in good working order.
  - 2) A mobile unit must have a 2A:10B:C sized extinguisher with an annual inspection tag from a Texas licensed inspection company or a receipt indicating purchase within the past year. If frying media (grease) is used, a class K extinguisher shall be required in the mobile unit. Any mobile unit equipped with an automatic extinguishing system shall have a current (bi-annual) inspection tag from a Texas licensed inspection company. All mobile units shall maintain ten (10) feet of clearance for access.
  - 3) All cooking appliances in the mobile unit shall be of an approved type, listed and labeled, for the use intended. Appliances shall be installed in accordance with the manufacturer's instructions. Coleman, camp stoves or the equivalent shall be prohibited. All cooking appliances shall have an approved, labeled and listed on-off valve.
  - 4) All propane and natural gas appliances shall be pressure tested annually and have only approved listed parts and no rubber hoses shall be allowed. All piping shall be in accordance with Natural Fire Protection Association 58 and be protected from physical damage. Mounting and placement of containers shall comply with Natural Fire Protection Association 58 and Texas Department of Transportation regulations. The capacity limit of propane and natural gas containers or cylinders shall be determined by the fire marshal's office after consideration of features that secure and protect the container.
  - 5) Cooking surfaces in the mobile unit shall be kept clean of grease build-up. Trash containers and debris shall be emptied regularly. Extension cords shall not be utilized for appliances. Appliances shall be plugged directly into electrical outlets.



## **SECTION 11.0: SUSPENSION OF PERMIT**

- 11.1 The regulatory authority may, without warning, notice, or hearing suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. Suspension is effective upon service of the notice required by Paragraph 7 B. of this ordinance. When a permit is suspended, food operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within 20 days of receipt of a request for a hearing.
- 11.2 Whenever a permit is suspended, the holder of the permit or the person in charge 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 regulatory authority by the holder of the permit within ten (10) days. If no written request for hearing is filed within ten (10) days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

## **SECTION 12.1: REVOCATION OF PERMIT**

- 12.1 The regulatory authority 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 regulatory authority in the performance of its duties. Prior to revocation, the regulatory authority 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 regulatory authority by the holder of the permit within such ten (10) day period.
- 12.2 If no request for hearing is filed within the ten (10) day period, the revocation of the permit becomes final.

## **SECTION 13.0 REVIEW OF PLANS**

- 13.1 Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the regulatory authority for review before work is begun. Extensive remodeling means that 20% or greater of the area of the food establishment is to be remodeled. The plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical plans and construction of materials of work areas, and the type and model of proposed fixed equipment and facilities. The plans and specifications will be approved by the regulatory authority if they meet the requirements of the rules adopted by this Ordinance. The approved plans and specifications must be followed in construction, remodeling or conversion.



- 13.2 Failure to follow the approved plans and specifications will result in a permit denial, suspension or revocation.

#### **SECTION 14.0: ADMINISTRATIVE PROCESS**

- 14.1 A notice as required in these rules is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the regulatory authority.
- 14.2 The hearings provided for in these rules shall be conducted by the regulatory authority at a time and place designated by it. Based upon the recorded evidence of such hearing, the regulatory authority shall make final findings, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the regulatory authority.

#### **SECTION 15.0: PENALTY**

- 15.1 Any person, firm or corporation violating any provisions of this Ordinance or failing to observe any provisions hereof, shall upon conviction, be fined a sum of not less than \$1.00, nor more than \$2000.00. Notwithstanding the foregoing, the \$2000.00 maximum fine hereunder shall only apply if the violation is a violation of a provision governing fire safety, zoning, or public health and sanitation, including dumping of refuse, the maximum permissible fine shall be \$500.00 rather than \$2000.00; provided further, no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of this state. A separate offense shall be deemed committed on each day any violation occurs or continues
- 15.2 The regulatory authority may seek to enjoin violations of these rules.

#### **SECTION 16.0: INVESTIGATION/ENFORCEMENT**

Investigation findings and determinations for penalty are enforced by local law enforcement officers.

#### **SECTION 17.0: SEVERABILITY**

It hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of the Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or



applications of this Ordinance which can be given effect without the invalid provision, and to the end the provisions of this Ordinance are declared to be severable.

**SECTION 18.0: REPEAL CLAUSE**

All Ordinances and Resolutions of the City of Big Lake, Texas, in conflict herewith are hereby expressly repealed.

**SECTION 19.0: EFFECTIVE DATE**

- 19.1 EACH and every provision of this ORDINANCE has been duly voted on and approved by the City Council, and all Ordinances in conflict herewith are hereby repealed from and after its passage as provided by law.
- 19.2 The provisions of this ordinance shall take effect ten (10) days from adoption by the municipality.

**SECTION 20.0: OPEN MEETINGS.**

It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose and said meeting was given as required by the Open Meetings Act

INTRODUCED AND APPROVED ON THIS 21st DAY OF NOVEMBER, 2023; AND:

PASSED, APPROVED AND ADOPTED ON THIS 5th DAY OF DECEMBER, 2023; by a vote of

3 (ays) to 0 (nays) and 2 (abstentions) of the City Council of the City of Big Lake, Texas.

CITY OF BIG LAKE



David Melms, Mayor

ATTEST:

  
Sheri Benson, City Administrator