

ORDINANCE NO. 23-18

AN ORDINANCE OF THE CITY OF BRECKENRIDGE, TEXAS AMENDING CHAPTER 13 “OCCUPATIONAL LICENSES AND REGULATIONS”, ARTICLE IV “PEDDLERS, ITINERANT VENDORS, SOLICITORS AND CANVASSERS” TO REVISE SECTION 13-61 “DEFINITIONS” TO ADD DEFINITIONS REGARDING MOBILE FOOD UNITS AND SECTION 13-76 “MOBILE FOOD UNITS” TO ALLOW FOR THE CITY MANAGER TO APPROVE THE PARKING OF MOBILE FOOD UNITS ON CITY STREETS; PROVIDING SEVERABILITY AND OPEN MEETINGS CLAUSES; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Breckenridge (the “City”) is a Home Rule Municipality acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code;

WHEREAS, the City may regulate certain businesses pursuant to Section 3.24 of the City’s Charter;

WHEREAS, pursuant to this authority, the City Commission of the City (the “City Commission”) adopted Ordinance No. 18-03 on February 6, 2018 to amend Article IV “Peddlers, Itinerant Vendors, Solicitors and Canvassers” to add Section 13-76 “Mobile Food Units” to allow for food trucks within the City and to allow for food trucks on public property in connection with special events approved by the City Commission and to amend Section 13-61 “Definitions” to provide definitions relating to mobile food units;

WHEREAS, food trucks are increasing in popularity within the City and the City Commission finds it would aid in the efficiency of governmental operations to allow for the City Manager, rather than the City Commission, to approve the parking of food trucks on City streets generally;

WHEREAS, on November 16, 2018, the City Commission adopted Ordinance No. 18-20 to adopt amendments of Article IV “Peddlers, Itinerant Vendors, Solicitors and Canvassers” regarding panhandling, including amendments to Section 13-61 “Definitions”;

WHEREAS, because Ordinance No. 18-03 was not yet codified at the time of the adoption of Ordinance No. 18-20, Ordinance No. 18-20 inadvertently omitted the changes to Section 13-61 “Definitions” that were made by Ordinance No. 18-03; and

WHEREAS, the City Commission wishes to correct Section 13-61 to include definitions relating to mobile food units.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRECKENRIDGE, TEXAS THAT:

I. Findings Incorporated. All of the above premises are found to be true and correct findings of the City Commission and are incorporated into the body of this Ordinance as if fully set forth herein.

II. **Amendment of Section 13-61.** Chapter 13 “Occupational Licenses and Regulations”, Article IV “Peddlers, Itinerant Vendors, Solicitors and Canvassers”, Section 13-61 “Definitions” is hereby amended in its entirety to read as follows:

Sec. 13-61. Definitions.

As used in this article the following words have the meaning indicated:

(a) *Canvasser* is a person who attempts to make personal contact with a person at his/her residence, business, or upon the public right-of-way without prior specific invitation from or appointment with the person, for the primary purpose of: (1) attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue, or candidate, even if incidental to such purpose the canvasser accepts the donation of money for or against such cause, or (2) distributing a handbill or flyer advertising a noncommercial event or service.

(b) *Handbill* or *flyer* means and includes any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter or literature.

(c) *Itinerant vendor* is a person, whether a resident of the city or not, who sets up and operates and temporary business on privately owned property, whether improved or unimproved, in the city, soliciting, selling, or taking orders for, or offering to sell or take orders for, any goods or services. A temporary business is one that continues for ninety (90) days or less; and, exists whether solicitation is from a stand, vehicle, or freestanding. The term “itinerant vendor” shall not include a mobile food vendor.

(d) *Mobile food unit* means and includes 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), 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 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).

(e) *Mobile food vendor* means a person that sells edible goods from a mobile food unit within the City.

(f) *Parkway* means the area between the edge of the designated street and the adjacent owner’s property line.

(g) *Peddler* is a person, whether a resident of the city or not, traveling from house to house or from street to street, who attempts to make contact with a person at his/her residence, business, or upon the public right-of-way without prior specific invitation from or appointment with the person for the primary purpose of attempting to sell a good or service. The word “peddler” shall include the term “solicitor”. The word “peddler” shall not include individuals traveling to businesses, houses, or places at the invitation of the resident or owner.

(h) *Solicitor* is a person, whether a resident of the city or not, who attempts to make contact with a person at his/her residence, business, or upon the public right-of-way without prior specific

invitation from or appointment with the person for the primary purpose of distributing a handbill or flyer advertising a commercial event or service or soliciting donations or funds for a commercial, for-profit event or business.

(i) *Street* means the portion of the street that is paved, designated, or used for vehicular traffic, and all areas dedicated to public use for public street purposes, including parkways, alleys, and sidewalks.

(j) *Traffic island* means a barrier within a street to exclude vehicles, designated for the purpose of separating or direction streams of vehicular traffic.

III. Amendment of Section 13-76. Chapter 13 “Occupational Licenses and Regulations”, Article IV “Peddlers, Itinerant Vendors, Solicitors and Canvassers”, Section 13-76 “Mobile Food Units” is hereby amended in its entirety to read as follows:

Sec. 13-76. Mobile Food Units.

(a) Permit Required. No person shall act as a mobile food vendor within the city without first obtaining a mobile food unit permit.

(1) Permit Application. A mobile food vendor must make a written application for a mobile food unit permit on forms provided by the City and available at City Hall. The application must contain the name and address of each applicant and, the location and type of proposed mobile food unit. A permit fee, as established by the City Commission and set out in the General Fee Schedule, shall be included with the application.

(2) Term; Renewal. Each permit shall be good for one year from the date of issuance. The mobile food vendor may renew the permit by paying a renewal fee, as established by the City Commission and set out in the General Fee Schedule, on or before the anniversary date of the issuance of the permit.

(3) Waiver of Fee. A mobile food vendor that is a non-profit corporation may receive a waiver of the permit fee upon providing written proof of the vendor’s tax-exempt status.

(4) Revocation; Appeal. A mobile food permit may be revoked, and such revocation may be appealed, pursuant to Sections 13-67 and 13-68 of this Article.

(b) State law. Every mobile food vendor shall ensure that the vendor’s mobile food unit complies with any and all applicable state law regarding mobile food establishments.

(c) Location of Mobile Food Unit.

(1) Mobile food units may be parked on private property, with the written permission of the property owner.

(2) Mobile food units may not park on any public street, alley or traffic island, unless:

(A) The mobile food unit has submitted a permit application, complies with requirements of this article, and has been approved by the City Manager; or

(B) The mobile food unit is an ice cream vehicle or snow cone truck remaining in one location on a public street or on public facilities for less than fifteen minutes.

IV. Severability. The provisions of this Ordinance are declared to be severable. If any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance, but they shall remain in effect notwithstanding the validity of any part.

V. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Local Government Code.

VI. Effective Date. This Ordinance shall take effect immediately upon its adoption by the City Commission.

The above and foregoing ordinance was duly proposed, read in full and adopted on the 24th day of October, 2023 at a regular meeting of the City Commission.

Bob Sims, Mayor

ATTEST:

Jessica Sutter, City Secretary

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