

ORDINANCE NO. 2023 - XX

Consideration and possible action on: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING CHAPTER 64 PEDDLERS, SOLICITORS AND VENDORS OF THE CITY CODE OF ORDINANCES; REPEALING CHAPTER 64 IN ITS ENTIRETY AND ADOPTING THE LANGUAGE HEREIN, PROVIDING A SEVERANCE CLAUSE AND TEXAS OPEN MEETINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Montgomery, Texas (the "City Council") desires to safeguard the health, safety and general welfare of the City of Montgomery, Texas (the "City") and its citizens;

WHEREAS, The City Council is responsible for the orderly development and regulation of activities within the City;

WHEREAS, The City Council desires to further regulate and clarify the standards for mobile food units (food trucks);

WHEREAS, pursuant to the Texas Local Government Code Chapter 51, the City Council may adopt, publish, amend or repeal an ordinance, rule, or police regulation that is for the good government, peace, and order of the City.

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

SECTION 1. The City Council adopts the findings and recitals above as true and correct.

SECTION 2. Chapter 64 of the City Municipal Code is hereby repealed in its entirety and amended by adopting the following:

Chapter 64 PEDDLERS, SOLICITORS AND VENDORS¹

ARTICLE I. IN GENERAL

Sec. 64-1. Purpose.

The purpose of this chapter is to protect the public health, safety and general welfare of the citizens of the city by providing for controls and regulations of solicitors, vendors, and similar businesses operating within the city.

¹State law reference(s)—Authority to regulate peddlers, V.T.C.A., Local Government Code §§ 51.001 , 215.031 .

(Code 2002, § 22-31; Ord. No. 1996-3, art. I, § 1, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

Sec. 64-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cottage Food Production Operation means an individual, operating out of the individual's home, who:

- Produces any of the following at their home:
 - A baked good that is not a time and temperature control for safety food (TCS food)
 - Candy
 - Coated and uncoated nuts
 - Unroasted nut butters
 - Fruit butters
 - A canned jam or jelly
 - A fruit pie
 - Dehydrated fruit or vegetables, including dried beans
 - Popcorn and popcorn snacks
 - Cereal, including granola
 - Dry mix
 - Vinegar
 - Pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less
 - Mustard
 - Roasted coffee or dry tea
 - A dried herb or dried herb mix
 - Plant-based acidified canned goods
 - Fermented vegetable products, including products that are refrigerated to preserve quality
 - Frozen raw and uncut fruit or vegetables
 - Any other food that is not a TCS food
- Has an annual gross income of \$50,000 or less from the sale of the described foods
- Sells the foods produced directly to consumer

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- Delivers products to the consumer at the point of sale or another location designated by the consumer

Display means to exhibit merchandise in any fashion, including in or upon vehicles, racks, shelves, hangers, or tables or upon the ground.

Donation and/or recycling vendor means any organization, entity, or individual engaged in the business of accepting textile or household goods for the purpose of reselling or donating accepted items.

Edible goods means:

- (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 Establishment means:

(A) A food establishment is an operation that:

(i) stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption, such as a restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending machine location, self-service food market, conveyance used to transport people, institution, or food bank; and

(ii) relinquishes possession of food to a consumer directly, or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises regardless if there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not time/temperature controlled for safety (TCS) foods;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables and/or cottage foods;

(iii) a food processing plant, including one that is located on the premises of a food establishment;

(iv) a cottage food production operation;

(v) a private home that receives catered or home-delivered food

Hawker means a peddler who makes noise to advertise his merchandise for sale, either by crying, shouting, ringing of bells or other means. The term "hawking" means to engage in the activities of a hawker.

Ice cream truck means a motor vehicle in which prepackaged ice cream, popsicles, ice sherbets or frozen desserts of any kind are sold while traversing city streets. Unless otherwise approved by the City, ice cream trucks in service shall continuously roam and may only stop to service customers. Ice cream trucks shall not solicit services while stationary.

Merchandise means goods, wares, services, photographs, magazines, plants, animals, fruit, meat, vegetables or other foods, whether cooked or otherwise, which are not offered for subsequent retail sale.

Mobile food court means a land use approved through a Special Use Permit (SEE Sec. 98-27. – Special use permits and Sec. 98-88. – Table of permitted uses and special uses) and developed in conformity with an approved site plan, where two or more mobile food vendors congregate to offer edible goods for sale to the public.

Mobile food unit/Mobile Food Vendor means a vehicle mounted, self or otherwise propelled, self-contained food service operation designed to be readily movable and used to store, prepare, display, serve or sell food. The term "mobile food unit/vendor" shall include:

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 trailer. A concession trailer is a self-contained unit that is pulled by a motorized unit and has no power to move on its own.

Peddler means a person, including his agents or employees, who goes from person to person, place to place or house to house, and who sells or offers to sell merchandise then in his possession. The term "peddling" means to engage in the activities of a peddler.

Solicitor means a person, including his agents or employees, who goes from person to person, place to place or house to house, selling, offering for sale or taking orders for the sale of merchandise not then in his possession, or who requests the gift or donation of money, property, services or any other thing of value. The term "soliciting" or "solicitation" means to engage in the activities of a solicitor.

Special Event means a sports event, pageant, celebration, historical reenactment, entertainment, exhibition, parade, fair, festival, or similar activity that is not a demonstration, engaged in by one or more persons, and could potentially impede traffic, impact city infrastructure or operations, and/or disrupt the general public's quiet enjoyment of their day.

Street means the entire width between the boundary lines of every way publicly maintained, where any part thereof is open to the use of the public for purposes of vehicular travel, including the ditches, drains, median, sidewalk and esplanade thereof, of any public alley, road, street, avenue, parkway or highway which is located within the city.

Street festival means any event, activity or entertainment sponsored by any organization, entity, or individual which may attract 25 or more persons and conducted in whole or in part

within any street and for which admission may be charged or at which peddling, hawking, soliciting, transient dealing, or operation of a mobile food unit may occur. The term "street festival" shall not include a rally conducted in support of or opposition to a candidate for political office or a ballot proposition in any election called by a federal, state or local unit of government.

Transient dealer means a person, including his agents or employees, who displays and sells or offers to sell merchandise from a fixed location not upon premises which are owned by the person or for which definite arrangements have been made for the lease, hire or rental for a term of at least one month. The term "transient dealing" means to engage in the activities of a transient dealer.

Unattended means without the continuous presence of a person to personally receive and issue receipts for donated items at the time they are deposited at the UDB.

Unattended donation bin or *UDB* means an unattended bin, container, dumpster or similar receptacle that is placed outdoors at a location visible from a public place for the purpose of receiving and/or temporarily storing donated food, clothing, shoes, toys, or other personal property.

(Code 2002, § 22-32; Ord. No. 1996-3, art. I, § 1.2, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

Sec. 64-3. Exemptions.

- (A) The provisions of this article shall not be deemed applicable to persons engaged in interstate commerce or to any such person to whom application of the provisions of this article would impose a direct and unlawful burden on interstate commerce.
- (B) Farm products. Any mobile food unit selling only non-refrigerated farm products in an unrefined state is exempt from this article.
- (C) Mobile food units operating under a valid city-issued Street Festival permit or other Special Event permit.
- (D) Mobile food units operating as an accessory use to a primary food establishment located on the same property that contains the primary food establishment. Products distributed by a mobile food unit under this subsection must be produced by the on-site primary food establishment.
- (E) Cottage food production operations
- (F) Continuously roaming ice cream trucks holding a valid food service permit through the appropriate County Department

(Code 2002, § 22-33; Ord. No. 1996-3, art. I, § 1.3, 6-4-1996; Ord. No. 2020-08, § I, 8-11-2020)

Sec. 64-4. Location.

It shall be unlawful for any person to engage in the business of peddling, hawking, soliciting, transient dealing or mobile food unit operations within any public street or upon any property owned or leased by the city and located within the city that is not a city-designated location and without a valid permit from the city.

Mobile food units may be allowed in the Commercial District (other than the Commercial District with the Historic District Overlay Zone designation SEE City Zoning Map), Industrial District and Institutional District after a mobile food unit permit is issued by the city (SEE Sec. 98-88. - Table of permitted uses and special uses).

Mobile food units may be permitted in the Historic District Overlay Zone and any other Zoning District in which mobile food units are not a allowed only after approval through the Special Use process and subsequently a mobile food unit permit issued by the city (SEE Sec. 98-27. - Special use permits).

(Code 2002, § 22-34; Ord. No. 1996-3, art. II, § 1, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

Sec. 64-5. Hours of residential solicitation.

It shall be unlawful for any person, except with the express advance consent of the owner, to enter in or upon any home or residential premises within the city to solicit or to sell or offer to sell merchandise, except between the hours of 10:00 a.m. and 5:00 p.m.

(Code 2002, § 22-35; Ord. No. 1996-3, art. II, § 3, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

Sec. 64-6. Street festivals.

Street festivals must obtain a permit from the city prior to the use of any public street or upon any property owned or leased by the city. In addition to the requirements of section 64-31, street festival organizers are required to provide a certificate of insurance listing the city as additional insured in an amount established by the city. The organizer of the street festival must maintain and provide to the city a list of all vendors at the event that includes sufficient information for each vendor to comply with the permit application requirements of this chapter.

- (1) Each applicant for a street festival shall be required to file for a permit application, 30 calendar days prior to the event, with the office of the city secretary.
- (2) The fee for street festival permits shall be \$50.00 with a clean-up deposit of \$200.00 that shall be paid prior to the permit issuance.
- (3) The street festival permit applicant shall provide detailed application information including, but not limited to:
 - a. Identify organization conducting the event and event coordinator contact information;
 - b. Include any authorization(s) for use of private property, street locations and/or street closure requests;
 - c. List all activities to be conducted at the event;
 - d. Provide detailed site plan showing how event will be set up;
 - e. Provide date and time of on-site preparation and clean-up after the event;
 - f. If alcohol will be sold, a TABC permit and proof of host liquor liability insurance shall be provided;

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- g. If alcohol will be sold and consumed on the street, sidewalk or alley, street festival applicants must meet the requirements of Section 6-57, Alcoholic Beverages, Consumption on the street, sidewalk, or alley.
 - h. If animals or livestock are to be used in conjunction with the event, a handwashing station shall be provided, and the location shown on the site plan; and
 - i. Certificate of insurance listing the city as additional insured.
- (4) Individual vendors operating under a street festival permit are allowed to operate during festival hours.
 - (5) The event coordinator shall provide a detailed list of all participating vendors including contact information.
 - (6) The issuance of the street festival permit may be approved by the city administrator or his/her designee upon review and approval by the police chief or his/her designee.
 - (7) The street festival permit upon approval of the city administrator or his/her designee shall be issued by the city secretary or his/her designee.

(Ord. No. 2020-08 , § I, 8-11-2020; Ord. No. 2021-11 , § 2, 6-22-2021)

Sec. 64-7. Donation and/or recycling vendors.

- (a) It shall be unlawful for any organization, entity, or individual to conduct donation and/or recycling business activities on any public street or upon any property owned or leased by the city. Donation and/or recycling locations operating on private property within the city must provide notarized written consent of the property owner to the city in addition to vendor application requirements found in section 64-31.
- (b) Donation and/or recycling locations must be staffed with at least one attendant continuously during operating hours. Donation bins commonly used in industry practices constitute a location of operation. No donation and/or recycling location shall accept donated goods except between the hours of 8:00 a.m. and 8:00 p.m. Location facilities shall be secured during non-operating hours in a manner that prevents unauthorized items from being left on site. Failure to properly secure the facility location to prevent unlawful dumping is grounds for immediate revocation of the vendor permit.

(Ord. No. 2020-08 , § I, 8-11-2020)

Secs. 64-8—64-28. Reserved.

ARTICLE II. PERMIT

Sec. 64-29. Required.

It shall be unlawful for any person to engage in the business of peddling, hawking, soliciting, providing donation and/or recycling services of textiles and household goods, transient dealing, or operation of a mobile food unit within the city without having first obtained a permit to engage in such business.

(Code 2002, § 22-61; Ord. No. 1996-3, art. II, § 2, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

Sec. 64-30. Classifications; term; fee.

The following term and fee apply to the class of permit.

No permit shall be issued prior to payment of the fee listed below.

Class	Term & Fee	Term & Fee	Term & Fee
Peddler	----- -----	1 Month - \$100	6 Months - \$600
Hawker	----- -----	1 Month - \$100	6 Months - \$600
Solicitor	----- -----	1 Month - \$100	6 Months - \$600
Transient dealer	----- -----	1 Month - \$100	6 Months - \$600
Mobile food unit	1 week - \$25	1 Month - \$100	6 Months - \$600

(Code 2002, § 22-62; Ord. No. 1996-3, art. II, § 4, 6-4-1996; Ord. No. 2004-14, § 1, 8-24-2004; Ord. No. 2020-08 , § I, 8-11-2020; Ord. No. 2020-13 , § 1, 11-10-2020)

Sec. 64-31. Application.

A completed application and all necessary information must be properly submitted to the office of the city secretary not less than ten (10) calendar days prior to the requested commencement of the activity. Each application shall include the following:

- (1) Full name, address, phone number, and email address of the primary applicant. The primary applicant should be the owner/manager of the operation and will be the main point of contact for all issues. If the applicant is a partnership, firm or joint venture, the applicant shall provide the full names, addresses, phone numbers and email addresses of the authorized officers signing the application. If the applicant is a corporation, the applicant shall provide the legal name, DBA, a copy of the corporate documents on file with the TX Secretary of State, and names, phone numbers and

email addresses for all authorized agents for the corporation. A copy of the primary applicant's valid government issued ID must be submitted with the application.

- (2) Detailed written narrative of the requested activity (type of solicitation, location of solicitation, full description of the merchandise to be sold, hours of activity, and any other information required by the city to consider the application). Include how electricity will be provided, how potable water will be provided, how bathrooms for the workers and customers will be provided, and how trash is going to be serviced. Include a statement from the primary applicant describing all criminal convictions and/or civil judgments arising from any State or Federal court within the last ten (10) years. If no convictions or civil judgments, please provide a statement stating same. Include a statement from the primary applicant that the applicant has had no permit issued pursuant to this article revoked in the previous one-year period.
- (3) If the applicant is not the owner of the location in which the service is to be provided, then the applicant shall also provide the lease indicating tenant-ship, or license to use the property, or signed notarized statement from the property owner providing permission to the primary applicant for the use stated on the application.

For mobile food units (in addition to the above):

- Proof of business auto liability insurance covering the mobile food vending unit
- Sales tax number with a copy of the sales tax permit
- Copy of the Montgomery County Health Department food service permit
- A detailed sketch plan illustrating all components of the activity and exact location to any other buildings, parking lots, and all businesses within 100' of the proposed activity location. If applicable, location of trash receptacles, bathrooms, parking area, and seating area
- A detailed narrative of how electricity will be provided, how potable water be provided, how bathrooms for the workers and customers will be provided, and how trash is going to be serviced
- A description or photo of the vehicle/trailer/cart being used for the mobile food unit
- Mobile food unit license plate number and VIN
- An illustration of all proposed signage and lighting related to the activity

(Code 2002, § 22-63; Ord. No. 1996-3, art. II, § 5, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020; Ord. No. 2020-13 , § 1, 11-10-2020)

Sec. 64-32. Exceptions; charities; public well-being; limited duration activities.

- (a) Notwithstanding any provision to the contrary contained in this article, no permit fee shall be charged under section 64-30, with respect to the following:

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- (1) Any charitable institution, organization or association organized and conducted exclusively for charitable purposes, and not for private gain or profit.
 - (2) Any individual, association, organization or other entity conducting or staging any concert, exhibition, lecture, entertainment or dance where the gross profits derived therefrom are used solely for charitable or benevolent purposes and not for the purpose of private gain or profit.
 - (3) Any organization, association or other entity holding any convention in the city and sponsoring any entertainment, dance, concert, exhibition, lecture or other event directly and exclusively connected with such convention, provided that any proceeds realized from such convention are devoted to the purposes of the entity sponsoring the same and are not for the purpose of private gain or profit of any individual or entity.
 - (4) Any service club or organization, such as Kiwanis, Rotary or Lions Clubs, nonprofit automobile clubs, chambers of commerce, trade associations, manufacturers' associations, labor organizations, and similar community or professional service clubs or organizations which do not contemplate the distribution of profits or dividends to the members thereof.
- (b) Any person, association, organization or other entity claiming an exemption as provided in subsection (a) of this section, shall provide such documentation and/or other evidence as may be required by the city secretary to substantiate and confirm the exempt status of such person, association, organization or other entity.
 - (c) All other applicable provisions of this article shall pertain to and be applicable to any such exempted persons, associations, organizations or other entities.
- (Code 2002, § 22-63.1; Ord. No. 2004-14, § 2, 8-24-2004; Ord. No. 2020-08 , § I, 8-11-2020)

Sec. 64-33. Special requirements for mobile food units.

- (a) Each permit for operation of a mobile food unit shall be conditioned upon continuous compliance with all federal, state, and local laws or rules adopted under such laws relating to food service, and the permittee shall at all times prominently display a current food service permit issued by the county health department.
- (b) Each permit for operation of a mobile food unit shall be conditioned upon continuous compliance with the following:
 - (1) Each driver or operator of a mobile food unit shall maintain financial responsibility as required by the Texas Motor Vehicle Safety Responsibility Act, V.T.C.A., Transportation Code Ch. 601 ;
 - (2) No sales shall be made on any street or roadway where posted speed limits are in excess of 30 miles per hour;
 - (3) No person shall sell or solicit sales of merchandise from a mobile food unit within 1,000 feet of any public or private school between the hours of 9:00 a.m. and 5:00 p.m.;

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- (4) No person shall sell or solicit sales of merchandise from a mobile food unit except between the hours of 9:00 a.m. and 9:00 p.m. unless operating under a street festival permit in accordance with section 64-6; and
 - (5) The permit issued pursuant to this article shall at all times be conspicuously posted upon the mobile food unit.

(Code 2002, § 22-64; Ord. No. 1996-3, art. II, § 6, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

Sec. 64-34. Granting or denial; issuance; transfer.

Within ten days of receipt of an application for a permit required by this article, the city secretary, upon finding the application and all submitted materials complete, may grant such application and issue the permit and identification badges required by this article or such application shall be deemed denied. The city secretary shall grant any application which on its face complies with the provisions set forth in section 64-31 and, if applicable, section 64-33, and shall deny any application which fails to meet such requirements. Upon written request of the applicant, the city secretary shall set forth in writing the reasons for the denial of any permit. If granted, the city secretary shall issue to the applicant a permit which shall set forth the permit number, the activity permitted, the effective and expiration dates of the permit and the name of the person to which the permit has been granted, and the name of each person authorized to engage in the permitted activity. No permit shall be assignable.

(Code 2002, § 22-65; Ord. No. 1996-3, art. II, § 7, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

Sec. 64-35. Revocation.

- (a) Any permit issued pursuant to this article may be revoked by the city secretary if he/she determines that such permit was obtained upon the basis of any intentional false material misrepresentation by the applicant, upon any conduct by the permittee, his agents or employees which arises from or is directly related to the permitted activity and which conduct is a violation of criminal statute, or upon violation by the permittee, his agents or employees of any term or provision of such permit or of this article.
- (b) The city secretary may revoke any permit if he/she determines that the permittee, his agents, or employees have committed three or more violations of any term or provision of such permit or of this article within the 12-month period immediately preceding such determination, or at any time upon conviction of a violation of any provision of this article. Prior to any such revocation, the city secretary shall provide the permittee notice of any proposed revocation and the grounds for revocation.

(Code 2002, § 22-66; Ord. No. 1996-3, art. II, § 8, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

Sec. 64-36. Appeals.

Any person to whom the city secretary shall have denied a permit or whose permit shall have been revoked under this article may appeal such denial or revocation to an appeal board consisting of the mayor, the city attorney, and the city administrator. Such an appeal shall be made in writing and filed with the city administrator's office not more than five (5) calendar days following such denial or revocation by the city secretary. Within five (5) calendar days of the filing of such appeal, the city administrator shall provide notice of the appeal hearing to the appealing party, which notice shall be sufficient if sent to the email address of such appealing party as shown on the application for the permit. Following such hearing, if the appeal board shall determine that there exist sufficient grounds for denial or revocation of any such permit, then the decision of the city secretary shall be deemed final. If the appeal board shall determine that sufficient grounds do not exist for denial or revocation, then the decision of the city secretary shall be reversed and such permit shall be granted or reinstated.

(Code 2002, § 22-67; Ord. No. 1996-3, art. II, § 9, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect any of the remaining provisions of this Ordinance.

SECTION 4. All other ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this Ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this Ordinance on all ordinances or sections of the City Code not specifically amended or repealed shall remain in full force and effect.

SECTION 5. It is hereby officially found and determined that the meeting at which this Ordinance was considered 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, of the Texas Government Code.

SECTION 6. This Ordinance shall take effect immediately upon its passage and adoption.

PASSED AND APPROVED by the City Council of the City of Montgomery, Texas on the 13th day of June 2023.

Byron Sanford, Mayor

ATTEST:

Nicola Browe, City Secretary

APPROVED AS TO FORM:

Alan P. Petrov, City Attorney