

**CITY OF MOUNT VERNON, TEXAS**

**ORDINANCE NO. 2023-06**

**AN ORDINANCE OF THE CITY OF MOUNT VERNON, TEXAS  
AMENDING CHAPTER 10 PROVIDING HEALTH AND SANITATION  
STANDARDS: FOR FOOD AND FOOD ESTABLISHMENTS;  
PROVIDING REGULATIONS APPLICABLE THERETO AND  
ENFORCEMENT THEREOF;**

***BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, TEXAS:***

**ARTICLE I. FOOD AND FOOD ESTABLISHMENTS**

**Sec. 10-50. - Definitions.**

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

*Category I* means food establishments that may require a high frequency of inspections under the Texas Food Establishment Rules may be classified by the regulatory authority as category I. The term "category I" includes a food establishment that prepares, serves, and sells food from raw meats or seafood, extensively handles foods, serves a highly susceptible population, or is subject to one or more other factors that require more frequent inspections. Without limiting the types of food establishments that may be included in this category, examples of category I food establishments include full service restaurants, fast food restaurants, hospitals, nursing homes, schools, meat markets, seafood markets, sandwich shops, delicatessens, and supermarkets.

*Category II* means food establishments that may require a lower frequency of inspection under the Texas Food Establishment Rules may be classified by the regulatory authority as category II. The term "category II" includes, without limitation, a food establishment that, with limited food handling, sells only prepackaged foods or prepares, serves, or sells food from pre-cooked ingredients or from ingredients with a low potential for creating a food-borne hazard. Without limiting the types of food establishments that may be included in this category, examples of category II food establishments include packaged grocery stores, convenience stores, produce markets, commissaries, ice cream shops, bakeries, day care facilities, adult care facilities, nursing homes, and lounges.

*Category III* means food establishments that may require a low frequency of inspection, or that may be temporary or seasonal, may be classified by the regulatory authority as category III. Without limiting the types of food establishments that may be included in this category, examples of category III food establishments include concession stands, seasonal food service, mobile food units, and produce stands.

*Mobile food unit* means a vehicle mounted food establishment which is readily moveable, and with pre-authorization from site owners, is allowed to move from one designated location to another designated location for the purpose of food sales intended for persons or employees at that specific location only. Mobile food establishments are required to meet all applicable codes as required by the city or other regulatory agencies.

*Pushcart* means a non-self-propelled mobile food unit limited to serving non-potentially hazardous food products of ice cream, popsicles, or other such items as authorized by the local regulatory authority.

*Regulatory agency* means the city, by and through a contracted agent acting on the city's behalf, or as otherwise designated by the city manager.

*Temporary food service establishment* means a food establishment that operates for the duration of an event or celebration such as, fair, grand opening, carnival, public exhibition, or similar gathering.

#### **Sec. 10-51. - Adoption of Texas food establishment rules.**

- (a) *Texas food establishment rules adopted.* The city by reference the provisions of the rules found in 25 Tex. Admin. Code, ch. 228 regarding the regulation of food establishments in this jurisdiction, as said rules currently exist and as they may hereafter be amended by the state board of health. Said rules are incorporated into this chapter and for all purposes made a part hereof.
- (b) *Conflicts.* In the event of any conflict between the provisions adopted in subsection (a) of this section and the other provisions of this article, the other provisions of this article shall prevail.

#### **Sec. 10-52. - Certified food manager required on staff.**

Each permitted food service establishment shall have at least one certified food manager on duty at all times. Certification is obtained through successful completion of a food protection management certification course, as approved and required by the department of state health services.

#### **Sec. 10-53. - Permits.**

- (a) *Permits authorized and required.* The regulatory authority is hereby authorized to issue permits for the operation of food establishments, provided that only a person or firm that complies with the requirements of this article shall be entitled to receive and retain such a permit.
  - (1) A person may not operate a food establishment in the city without a valid permit issued by the regulatory authority.
  - (2) A valid permit must be posted in public view on or in every food establishment.
  - (3) A permit that has been revoked, that has expired, or that has lapsed for any reason is not valid.
  - (4) A suspended permit is not valid during the period of suspension.
- (5) *Permits not transferable.* Permits are not transferable from one person to another or from one location to another location, except as otherwise permitted by this article.
- (6) *Multiple operations in single location.* If more than one food establishment is conducted in a single building or at the same address, then a separate permit shall be required for each such food establishment, regardless of whether each such food establishment is owned by the same person or by different persons.

(7) *Temporary food permit.* Non-profit organizations may only apply for four (4) temporary food permits per year independent of and actual City wide event. Any non-profit organization that has a monthly re-occurring event may apply once per year for the entire calendar year.

**Sec. 10-54. - Application for permit.**

- (a) *Written application.* Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the regulatory authority. The application must contain:
- (1) The name and address of each applicant; and
  - (2) The location and type of the proposed food establishment and the applicable fee.
- (b) *Denial or revocation of permit.* Failure to provide all information requested on the application form, or falsifying information required may result in denial or revocation of the permit.
- (c) *Renewal of permit.* Renewals of permits are required on an annual basis and the same information is required for renewal permits as for an initial permit.

**Sec. 10-55. - Review of plans.**

- (a) *Review of plans.* Whenever a food establishment is established, constructed or extensively remodeled, and whenever an existing structure is converted to use a food establishment, properly prepared plans and specification for such establishment, construction, remodeling or conversion shall be submitted to the regulatory authority for review before work is begun.
- (1) A food establishment is extensively remodeled when:
    - a. 50 percent or greater of the square footage within the food preparation area is to be remodeled; or
    - b. A building permit is required for work done within the food preparation area.
  - (2) 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.
  - (3) The plans and specifications will be approved by the regulatory authority if they meet the requirements of this article. The establishment, construction, remodeling or conversion must be according to the plans and specifications.
- (b) *Inspection.* Whenever plans and specifications are required to be submitted to the regulatory authority, the regulatory authority shall inspect the food establishment to determine compliance with the approved plans and specifications and with the requirements of this article.
- (c) *Effect of noncompliance.*
- (1) Failure to follow the approved plans and specifications or to obtain the necessary approval will result in permit denial, suspension, or revocation in accordance with the provisions of this article.
  - (2) The regulatory authority may also suspend or revoke a permit in accordance with this article if a food establishment that is required to be inspected under this section begins operations before passing said inspection.

- (3) Suspension, revocation, or denial of a permit renewal shall not preclude the regulatory authority from taking any other enforcement action authorized by this article or by other law.

**Sec. 10-56. - Inspections.**

- (a) *Permit inspections.* Prior to the issuance of a permit, the regulatory authority shall inspect the food establishment or proposed food establishment to determine compliance with this article.
- (b) *Additional inspections.* Additional inspections shall be performed as often as necessary for the enforcement of this article. The regulatory authority shall determine the frequency of inspections to be made under this article in accordance with the criteria set forth in the state food establishment rules.
- (c) *Inspection based on complaint.* In addition to any other authority granted by this article, the regulatory authority shall have the authority to inspect a food establishment based on complaints or other credible information indicating the possibility of a violation of this article.
- (d) *Access.* The authority of the regulatory authority to inspect a food establishment includes, without limitation, the right to access any and all parts of the food establishment and the right to view and copy any or all of the records relating to the purchase, sale, or handling of food.
- (e) *Posting.* The results of the most recent inspection by the regulatory authority (including without limitation the letter grade, score, or ranking assigned to the food establishment by the regulatory authority) must be posted in public view on or in every food establishment.
- (f) *Maintaining inspections reports.* Copies of all food service inspection reports including any and all notices of violations issued within the previous 12 months must be maintained on premises and be made available for review by the regulatory authority upon request.
- (g) *Effect of noncompliance.* A food establishment that does not comply with this article will be denied a permit or the renewal of a permit or may have its permit revoked or suspended in accordance with the provisions of this article. Suspension, revocation, or denial of a permit or of permit renewal shall not preclude the regulatory authority from taking any other

**Sec. 10-57. - Examination, detention, and condemnation of food.**

- (a) *Examination of food.* Food may be examined, collected, or sampled by the regulatory authority as often as necessary for the enforcement of this article.
- (b) *Issuance of detention order.* The regulatory authority may place a detention order on any food which the regulatory authority believes is in violation of any provision of this article. The detention order is effective upon the service of written notice to the permit holder for the food establishment at which the food is located or to the person in charge of the food.
- (c) *Notice.* The written notice of a detention order must specify the reasons for the detention order. The notice must also state that a request for hearing may be filed within ten days and that if no hearing is requested, the food shall be destroyed. The regulatory authority shall tag, label or otherwise identify any food subject to the detention order. The tag, label, or other identification placed on the food by the regulatory authority must not be removed until and unless the detention order is lifted or vacated or the food is destroyed as directed by the regulatory authority.

- (d) *Effect of detention order.* No food subject to a detention order shall be used, served or removed from the food establishment unless the regulatory authority gives permission to destroy the food and the food is destroyed as directed by the regulatory authority. The regulatory authority shall permit storage of the food under conditions specified in the detention order, unless storage is not possible without risk to public health, in which case immediate destruction shall be ordered and accomplished.
- (e) *Hearing.* A hearing shall be held if the hearing is requested within ten days from the date on which the required notice of detention order is served. On the basis of evidence produced at the hearing, the detention order may be vacated or the permit holder or person in charge of the food may be directed by written order to destroy such food or to bring it into compliance with the provisions of this article.

**Sec. 10-58. - Fees.**

- (a) Fees to be paid for health department food service permits are as follows:
  - (1) Category I: \$150.00
  - (2) Category II: \$125.00
  - (3) Category III: \$100.00
  - (4) Re-inspection fee: \$75.00
- (b) Fee exemptions. A food establishment operated solely by a nonprofit entity shall be exempt from the fees imposed by this article; provided, however, that such an establishment shall in all other respects be subject to the regulations and permit requirements relating to food service establishments. The regulatory authority may require any information necessary to determine whether an organization is nonprofit for purposes of this exemption.

**Sec. 10-59. - Suspension of permit.**

- (a) *Suspension of permit.* The regulatory authority may, without warning, advance 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 or if any required fee has not been paid by the appropriate deadline. Suspension is effective immediately upon service of the notice required. When a permit is suspended, food operations shall cease immediately. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within ten days of receipt of a request for a hearing.
- (b) *Notice.* 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 days. If no written request for hearing is filed within ten days, the suspension is sustained.
- (c) *Duration.* Suspension of a food permit shall continue until the regulatory authority determines, after an inspection, that the reasons for suspension no longer exist or until all required fees have been paid, as applicable.
- (d) *Other remedies reserved.* Suspension of a food permit shall not preclude the regulatory authority from taking any other enforcement action authorized by law, including without limitation the revocation of the suspended food permit.
- (e) *Posting.* During the period of any permit suspension under this article, the food service establishment subject to the suspension shall post a sign clearly visible to the public outside

of the establishment, which sign shall state "Closed by the environmental services, food safety division of the city." The regulatory authority shall have the authority to reasonably regulate the size and location of the sign and the size of the lettering thereon.

(f) *Regulatory Authority.* The regulatory appeal committee will be made up of Code Compliance, City Administrator and Main Street Co-ordinator.

**Sec. 10-60. - Revocation of permit.**

- (a) *Revocation of permit.* The regulatory authority may, after providing opportunity for a hearing, revoke a permit for repeated or serious violations of any of the requirements of this article including failure to pay any required fees, or for interference with the regulatory authority in the performance of its duties.
- (b) *Notice and hearing.* 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 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 the ten-day period, the revocation of the permit becomes final.
- (c) *Other remedies reserved.* Revocation of a food permit shall not preclude the regulatory authority from taking any other enforcement action authorized by law, including without limitation the enforcement of any criminal penalty authorized by this Code.

**Sec. 10-61. - Administrative process.**

- (a) *Service of notice.* A notice as required in this article 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.
- (b) *Conduct of hearings.* The hearings provided for in this article 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.

**Sec. 10-62. - Penalty and enforcement.**

- (a) *Penalty.* Any person who violates a provision of this article and any person who is the permit holder of or otherwise operates a food service establishment that does not comply with the requirements of this article and any responsible officer of that permit holder or those persons shall be deemed guilty of a misdemeanor and shall be subject to a fine.
- (b) *Interference with posting.* A person commits an offense if the person removes, defaces, or makes illegible a posting or any part of a posting required by the regulatory authority and shall be subject to a fine.
- (c) *Other remedies reserved.* The imposition of penalty or injunction in accordance with this article shall not preclude the regulatory authority from taking any other enforcement action authorized by law, including without limitation the revocation or suspension of a food permit in accordance with the requirements of this article.

**PASSED AND APPROVED** by the City Council of the City of Mount Vernon, Texas, this 10<sup>th</sup> day of April, 2023.

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Mayor

ATTEST:

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City Secretary