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CITY OF SEABROOK
ORDINANCE NO. 2019-28

MOBILE FOOD VENDOR REGULATIONS

AN ORDINANCE AMENDING THE CODE OF THE CITY OF SEABROOK, CHAPTER 22, "BUSINESSES", ARTICLE II, "FOOD SERVICE" BY CREATING A NEW SECTION 22-51 ENTITLED "MOBILE FOOD VENDORS", WITH ASSOCIATED REGULATIONS UNDER THIS TITLE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; PROVIDING FOR A PENALTY IN AN AMOUNT NOT TO EXCEED $2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF BY INCLUSION INTO THE CODE; AND PROVIDING FOR SEVERABILITY AND NOTICE.

WHEREAS, the City of Seabrook, Texas, is a Home Rule city incorporated in and operating under the laws of the State of Texas; and

WHEREAS, the City Council seeks to protect the public health, safety, and welfare through a comprehensive regulatory program that includes food safety standards; and

WHEREAS, with these regulations, the City Council addresses potential health risks posed by Mobile Food Vendors and the need for application of regulations under state and local health codes; and

WHEREAS, the City Council has assessed the potential effect on land use, traffic safety threats, the utility needs of Mobile Stores in terms of water, wastewater, electricity, gas, and telecommunications, and how those demands correspond to the community's land use, utility plans, and infrastructure; and

WHEREAS, the City Council is authorized to regulate Mobile Food Vendors by virtue of the Texas Constitution, the Texas Health and Safety Code, the Texas Administrative Code, the City's police power and by Chapters 51, 54, 211, 212, 214, 216, and 217 of the Texas Local Government Code; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SEABROOK, STATE OF TEXAS:

SECTION 1. FINDINGS OF FACT.

The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

SECTION 2. AMENDMENT OF CHAPTER 22, "BUSINESSES", ARTICLE II, "FOOD SERVICE" BY CREATING A NEW SECTION 22-51 TITLED "MOBILE FOOD VENDORS", WITH ASSOCIATED REGULATIONS

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The Seabrook City Code, Chapter 22 "Businesses", Article II, "Food Service", is hereby amended by creating a new Section 22-51 entitled "Mobile Food Vendors" as follows:

"Sec. 22-51 Mobile food vendors.

Purpose and Applicability:

The purpose of this Section is to permit mobile food vendors to operate on private property within the City and establish regulations to protect the health, safety and welfare of the public.

(1) Definitions.

a. Concept Plan: **means a diagramed plan that includes property lines, adjacent rights-of-way, location of all Mobile Food Vending Units, parking areas and surface material, maneuvering areas and surface material, seating areas, and any other information reasonably required by the Director of Planning and Development. Concept plans may be approved by the Director of Planning and Development.**

b. Site: **means a lot or parcel of property on which a mobile food service unit is permitted to operate.**

c. Commissary: **means a central preparation facility or other fixed food establishment that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption to mobile, temporary and portable food vendors.**

d. Health Authority: **means the Harris County Public Health Department, or its designee, or any other agency charged with enforcement of regulations applicable to establishments regulated under this ordinance.**

e. Mobile Concession Trailer: **means a vending unit selling items defined as edible goods, which is pulled by a motorized unit and has no power to move on its own.**

f. Mobile Food Cart or Concession Cart: **means a mobile vending unit, selling items defined as edible goods, that must be moved by non-motorized means.**

g. Mobile Food Truck: **means a self-contained motorized unit selling items defined as edible goods.**

h. Mobile Food Vending Unit: **means a Mobile Food Truck, Mobile Food Cart, Concession Cart, or Mobile Concession Trailer.**

i. Mobile Food Vendors: **shall mean any business that operates or sells food for human consumption, hot or cold, from a Mobile Food Vending Unit.**

j. Mobile Food Vendor Food Court: **means a site designed for the operation of one or more Mobile Food Vendors as the primary use.**

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k. ***Texas Food Establishment Rules or the Rules*****: means 25 Texas Administrative Code chapter 228, as amended.**

(2) Regulations for mobile food vendors.

1. No person shall act as a Mobile Food Vendor in the City without a permit issued by the City.

2. Each Mobile Food Vendor shall display at all times, in a conspicuous place where it can be read by the general public, the City of Seabrook permit under this article and permit number.

3. Mobile Food Vendors shall not operate within a public park, public right-of-way, publicly owned property or site without written permission from the City Manager or the City Managers designee.

4. Mobile Food Vendors must meet all applicable state, county, and local laws.

5. Mobile Food Vendors must meet all applicable laws regarding Mobile Food Vendors as described in most recently adopted edition of the International Fire Code (IFC) or any subsequent amendments thereto.

6. Mobile Food Vendors must operate from an approved commissary in good standing as defined in and required by the Texas Food Establishment Rules.

7. The Mobile Food Vendor shall secure and display at all times in a conspicuous place where it can be read by the general public, a health permit from Harris County Public Health Department.

8. All employees of the permit holder must have a valid food handlers training certificate.

9. When required, Mobile Food Vending Units must be equipped with commercial mechanical facilities sufficient to provide proper cooking ventilation and fire suppression for eating establishments, as established under the City's adopted building codes. All equipment on the vehicle shall be NSF International (formerly National Sanitation Foundation) approved, American National Standards Institute (ANSI) approved, or of commercial grade.

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10. Mobile Food Vendors shall provide covered garbage and storage facilities for employee and customer use, of sufficient size that refuse is fully contained in a manner that prevents litter and remains insect- and rodent-proof. The Mobile Food Vendors are responsible for the disposal of all the subject refuse prior to leaving the point of sale site.

11. The Mobile Food Vending Unit must meet the following plumbing standards:

a. All liquid waste shall be discharged to an approved sanitary sewage disposal system at the commissary or through an authorized service provider. All used fats, oil, or grease shall be discharged to an approved grease interceptor at the commissary or through an authorized service provider. Used fats, oils or grease shall not be discharged to any unauthorized food establishment grease interceptor.

b. Liquid waste shall not be discharged from the retention tank when the Mobile Food Vending Unit is open to the public or in the process of preparing food.

c. The waste connection shall be located below the water connection to preclude contamination of the potable water system.

d. Connections to a water or sewage system on site is prohibited.

12. The Mobile Food Vendor shall display at all times, in a conspicuous place where it can be read by the general public, a copy of a Texas sales tax and use certificate.

13. Mobile Food Vending Units shall be separated from property lines, public rights-of ways, existing buildings, and other mobile food vehicles by a minimum of twenty five (25) feet. Food Vendors shall not set up, or be located in fire lanes or parking spaces that are required for the use of an existing business.

14. The Mobile Food Vending Unit and any parking areas used by the Mobile Food Vendor or its customers, shall be located on a paved surface, or an alternative all-weather surface, as approved by the City Planning Director or designee.

15. Each Mobile Food Vending Unit shall be clearly marked with the food establishment's name or a distinctive identifying symbol and shall display the name while in service within the City.

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16. Except as shown on an approved concept plan, the Mobile Food Vendor shall prepare, serve, store and display food and beverages on or in the Mobile Food Vending Unit itself; and shall not attach, set up, locate, or use any other device or equipment intended to increase the selling, serving, storing or displaying capacity of the Mobile Food Vendor.

17. No Mobile Food Vendor may operate outside of the hours of 8:00 AM to 10:00 PM, unless otherwise authorized within the permit.

18. Mobile Food Vendors must comply with City Code Chapter 55, Article II "Noise"

19. Drive-through service from Mobile Food Vendors is prohibited.

20. Alcohol sales from Mobile Food Vendors is prohibited.

21. Access to Restroom Facilities.

a. Any Mobile Food Vendor that will be in one location for more than one (1) hour, must submit to the City written proof of a restroom facility agreement that provides the availability of a fixed establishment restroom facility for the use of the Mobile Food Vendor employees and customers, located in a business establishment within Three hundred (300) feet of each location where the Mobile Food Vending Unit will be in operation.

b. Proof of availability of a fixed establishment restroom shall be in the form of a written and notarized statement from the property owner, or owner's authorized agent, including the name, address, and telephone number of the property owner or authorized agent, and the type of business and hours of operation of the business, granting permission for the use of the facilities. If the business owner is a partnership or corporation, the statement shall include the name, address and telephone number of one (1) of the partners or officers.

c. A copy of the records shall be immediately available for inspection by the City on the Mobile Food Vending Unit.

22. Mobile Food Vehicles shall be movable by motorized or non-motorized means.

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23. No Mobile Food Vendor shall operate within (300) feet from the primary entrance of Full Service or Fast Food Restaurant(s). This separation requirement shall only apply during normal hours of operation of the Full Service or Fast Food Restaurant(s).

Exception, Mobile Food Vendors may locate:

a. Within three hundred (300) feet of a Full Service or Fast Food Restaurant(s), if the restaurant owner/owners have provided the food vendor written consent to located on the same lot as his/her restaurant(s), or if all applicable restaurant owners within the three hundred (300) feet buffer area provide written consent to the Mobile Food Vendor.

b. Written consent shall be in the form of a written and notarized statement from the property owner, or owner's authorized agent, including the name, address, and telephone number of the property owner or authorized agent, and the type of business and hours of operation of the business. If the business owner is a partnership or corporation, the statement shall include the name, address and telephone number of one (1) of the partners or officers. The notarized statement shall be provided to the City at the time of permitting.

(3) Mobile Food Vendors on Private Property.

Mobile Food Vending Units located on private property must comply with the following:

1. The private property must be located in a zoning district that allows restaurants, as provided for in Table 3-A "Comprehensive Land Use Regulation Matrix".

2. The private property must be developed and improved, and contain an existing permanent business operating in a building with a certificate of occupancy at all times while the Mobile Food Vending Unit occupies the property.

3. Electricity shall be from a generator and the Mobile Food Vendor shall utilize electrical cords in conformance with the National Electrical Code as adopted and amended by the City.

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4. **The Mobile Food Vendor must submit with the permit application, written authorization or other suitable documentation showing that the owner of the property, or the owner's authorized agent, consents to the Mobile Food Vendor operating on said property.**

(4) Mobile Food Vendors on Construction Sites.

For subdivisions or sites in any zoning districts that are actively under construction and have not yet been issued a Certificate of Occupancy, a Mobile Food Vendor may operate for less than one (1) hour.

(5) Mobile Food Vendor Permit Application.

The application for a Mobile Food Vendor permit shall include the following information:

1. **an application fee of $250.00;**

2. **name, legal name of business or entity, business address, telephone number, and email address of the applicant;**

3. **the applicant's identification number as shown on a current and valid government-issued identification document that includes a photograph of the applicant;**

4. **if the applicant represents a corporation, association or partnership, the names and addresses of the officers or partners;**

5. **name, legal name of business or entity, business address, telephone number, and email address of the owner if the owner is not the applicant;**

6. **signed and notarized permission from all private property owners where the Mobile Food Vending Unit will be stationed;**

7. **the manner of mobile food vending operation to be conducted (for example, foot vending, truck, trailer, pushcart, etc.); the make, model, year, license or registration, and vehicle identification number of each vehicle to be used in the mobile food vending operation;**

8. **proof of motor vehicle insurance for each vehicle to be used in the mobile food vending operation:**

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9. **an itinerary of locations where sales will occur; and a location map and sketch of site location for each location to be used by the Mobile Food Vendor;**

10. **a concept plan, if applicable;**

11. **a copy of the vendor's current health permit from Harris County Public Health Department;**

12. **if the mobile vending unit will be placed in one (1) location for more than one (1) hour, a written agreement from a business within three hundred (300) feet for employees of the mobile food establishment to have use of flushable restrooms during hours of operation, portable restrooms are prohibited;**

13. **proof of water/wastewater service;**

14. **documentation indicating the volume capacity of any required water and wastewater storage tanks either on the tank itself or in writing;**

15. **a description of the type of food or the specific foods to be vended;**

16. **a notarized statement from the owner of the commissary stating that the mobile food establishment will use the facility as its base of operation and providing the address and food establishment permit number of the facility;**

17. **a valid copy of the applicant's sales tax and use tax permit; and**

18. **any other information reasonably required by the Director of Planning and Development.**

(6) Mobile Food Vendor Permits.

1. **Permit Determinations. The City will evaluate the data furnished by the applicant and may require additional information. Within fourteen (14) days of receipt of a completed permit application, the City will determine whether or not to issue a Mobile Food Vendor permit. The City may deny an application for a permit on any of the following grounds:**

   a. **failing to provide all of the information required by the City;**
   b. **the applicant's past record of ordinance violations;**

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c. **safety record of the applicant or any driver, based on such things as civil and criminal lawsuits and violations of environmental laws and ordinances; and**
d. **providing false, misleading or inaccurate information to the City.**

2. **Permits are not transferable.**

3. **Mobile Food Vendor permits shall be for a 90 day period.**

(7) Permit Revocation and Appeal.

1. **The City Manager or City Manager's designee may revoke a permit issued under this ordinance by a Mobile Food Vendor if the permit holder or the permit holder's employee:**

   a. **commits critical or repeated violations of applicable law; or**
   b. **knowingly provides false information on an application; or**
   c. **interferes with the Health Authority in the performance of the Health Authority's duties; or**
   d. **if a permitted establishment under this Article changes ownership and there are violations that must be corrected to meet applicable standards.**

2. **Before revoking a permit, the City shall provide the permit holder or person in charge with written notice of the pending permit revocation, unless circumstance and conditions require immediate revocation and closing of the unit. In the event of immediate revocation, written notice shall be provided after revocation in a timely manner.**

   The written notice shall include:

   a. **the reason(s) the permit is subject to revocation; and**
   b. **if applicable:**

      i. **the date on which the permit is scheduled to be finally revoked; and**
      ii. **a statement that the permit will be revoked on the scheduled date unless the permit holder files a written request for a meeting with the City no later than the tenth (10th) day after the date the notice is served.**

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3. **The applicant may appeal a final revocation of a permit by submitting a written request for appeal along with any evidence supporting the appeal to the Board of Adjustment within ten (10) days of receiving the notice of final revocation. The Board of Adjustment will make a decision within a reasonable time of receipt of the appeal, but no later than thirty (30) days after receipt. The Board of Adjustment's decision shall be final.**

(8) Inspections.

1. **The City may inspect a Mobile Food Vendor during regular business hours and at other reasonable times to determine compliance with this ordinance.**

2. **After conducting an inspection, the City shall inform the Mobile Food Vendor of findings.**

3. **If a violation is found, the City shall:**

   a. **close the unit; or**
   b. **prescribe a reasonable time period for correction of violations. Re-inspections at prescribed time intervals will be conducted to determine whether required corrections have been made."**

SECTION 3. INCORPORATION INTO THE CODE; PENALTY CLAUSE.

This Ordinance is hereby incorporated and made a part of the Seabrook City Code. Violation of this Ordinance is subject to the penalty section of said Code of Ordinance, Section 1-15 "General penalty; continuing violations" which provides that any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed $2,000.00 unless otherwise specified therein. Each day of violation shall constitute a separate offense.

SECTION 4. REPEAL OF CONFLICTING ORDINANCES.

All ordinances or parts of ordinances in conflict or inconsistent with this Ordinance are hereby expressly repealed. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Seabrook.

SECTION 5. SEVERABILITY.

In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate

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this Ordinance as a whole or any part of provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Seabrook, Texas, declares that it would have passed each every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

SECTION 6. NOTICE.

The City Secretary shall give notice of the enactment of this Ordinance by promptly publishing it or its descriptive caption and penalty after final passage in the official newspaper of the City; the Ordinance to take effect upon publication.

PASSED AND APPROVED on first reading with a quorum present, by an affirmative vote of a majority of Councilmembers present, in accordance with Seabrook City Charter Section 2.10 on this 5th day of November, 2019.

PASSED, APPROVED, AND ADOPTED on final reading with a quorum present, by an affirmative vote of a majority of Councilmembers present, in accordance with Seabrook City Charter Section 2.10 on this 19th day of November, 2019.

DocuSigned by:
Thomas G. Kolupski
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By: _____
Thomas G. Kolupski, Mayor

ATTEST:

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Robin Lenio
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By: _____
Robin Hicks, TRMC
City Secretary

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APPROVED AS TO FORM:

DocuSigned by:
Steven L. Weathered
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By: _____
Steven L. Weathered
City Attorney