

**ORDINANCE NO. 2019-07**

**AN ORDINANCE OF THE CITY OF BASTROP, TEXAS (“CITY”) IMPLEMENTING A PILOT PROGRAM TO AUTHORIZE THE SALE OF FOOD FROM MOBILE FOOD VENDORS WITHIN THE CITY LIMITS AND TO ESTABLISH A MOBILE FOOD VENDOR PERMIT PROCESS FOR THE PILOT PROGRAM; PROVIDING FOR FINDINGS OF FACT, PURPOSE, EXPIRATION DATE; ENACTMENT, VARIANCE, REPEALER, SEVERABILITY, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.**

**WHEREAS**, the City of Bastrop, 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 applicability of certain state and local health codes; and

**WHEREAS**, the City Council has assessed potential 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 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

**WHEREAS**, the City Council now adopts the appropriate administrative and regulatory amendments, rules and procedures.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AS FOLLOWS:**

**SECTION 1: FINDINGS OF FACT:** The foregoing recitals are incorporated into this ordinance by reference as findings of fact as if expressly set forth herein.

**SECTION 2: DEFINITIONS:** As used in this ordinance, these terms shall be defined as follows. Terms appearing in this ordinance but not defined herein shall have the meanings provided in the city’s code of ordinances, or if not defined by the city then the common meanings in accordance with ordinary usage.

- 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 will be approved by the Director of Planning and Development.
- B) **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.
- C) **Health Authority:** means the Bastrop County Environmental and Sanitation Services, or its designee, or any other agency charged with enforcement of regulations applicable to establishments regulated under this ordinance.
- D) **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.
- E) **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.
- F) **Mobile Food Truck:** means a self-contained motorized unit selling items defined as edible goods.
- G) **Mobile Food Vending Unit:** means a Mobile Food Truck, Mobile Food Cart, Concession Cart, or Mobile Concession Trailer.
- H) **Mobile Food Vendors:** shall mean any business that operates or sells food for human consumption, hot or cold, from a Mobile Food Vending Unit.
- I) **Mobile Food Vendor Food Court:** means a site designed for the operation of one or more Mobile Food Vendors as the primary use.
- J) **Texas Food Establishment Rules or the Rules:** means 25 Texas Administrative Code chapter 228, as amended.

**SECTION 3: PURPOSE:** This ordinance establishes a pilot program for Mobile Food Vendors. The purpose of the program is to ensure for the public safety, convenience, and protection of the City and the citizens of the City while allowing City Council, city staff, mobile food vendors, and citizens the opportunity to experience the pilot program and improve on it if the City Council chooses to make the program permanent.

**SECTION 4: EXPIRATION DATE:** This ordinance will expire on October 31, 2019.

**SECTION 5: ENACTMENT:** The City of Bastrop hereby enacts this ordinance implementing a pilot program to authorize the sale of food from mobile food vendors within the city limits and to establish a mobile food vendor permit process for the pilot program:

## **A) Requirements Applicable to all 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 Bastrop 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 Manager's designee.
4. Mobile Food Vendors must meet all applicable state and local laws and regulations, including but not limited to the Rules.
5. Mobile Food Vendors must meet all applicable laws regarding Mobile Food Vendors as described in the International Fire Code (IFC), 2018 edition.
6. Mobile Food Vendors must operate from an approved commissary in good standing as defined in and required by the Texas Food Establishment Rules. An existing food establishment may serve as a commissary if approved by the City. The commissary shall have an approved vehicle storage facility, approved potable water hookups, approved wastewater drainage facilities, approved grease interceptor hookup(s) and size, and any other accommodations as determined necessary by the City to ensure compliance with all regulatory codes, including but not limited to the local health authority. The commissary shall comply with all Food Establishment Rules and hold all current licenses and permits as required by the Rules. Valid copies of the commissary's current licenses and permits used under the Food Establishment Rules and most recent health inspection report must be kept on file with the City. Mobile Food Vendors shall provide documentation of each visit to or service by the commissary and shall have that documentation immediately available for inspection by the City.
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 Bastrop County.
8. All employees of the permit holder must have a valid food handler's 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 is to be NSF International (formerly

National Sanitation Foundation) approved, American National Standards Institute (ANSI) approved, or of commercial grade.

10. Any Mobile Food Vendor that will be in one location for more than four (4) hours 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.
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 existing buildings and other mobile food vehicles by a minimum of ten (10) feet. Food Vendors shall not set up 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, should be located on a paved surface, or an alternative all-weather surface as approved by the City Engineer or their designee. Where providing paved or all-weather surface would be impractical or not provide a public benefit, alternative methods may be approved with a concept plan. Alternative methods may include but are not limited to portable spill berms, environmentally sensitive materials, and other methods to mitigate property damage and environmental hazards.
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.

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, 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 Section 44.1, "Noise Standards."
19. Mobile Food Vendors must comply with City Code Section 43.1, "Outdoor Lighting Standards."
20. Drive-through service from Mobile Food Vendors is prohibited.
21. Alcohol sales from Mobile Food Vendors is prohibited.
22. Access to Restroom Facilities.
  - a. Any Mobile Food Vendor that will be in one location for more than four (4) hours must submit to the City written proof of a restroom facility agreement that provides the availability of a fixed establishment restroom or a portable restroom facility for the use of the Mobile Food Vendor employees and customers located in a business establishment within one hundred fifty (150) 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. Proof of availability of a portable restroom facility shall be in the form of a service contract, which includes a maintenance schedule, and a receipt showing the last maintenance performed.
  - d. A copy of the records shall be immediately available for inspection by the City on the Mobile Food Vending Unit.
23. Mobile Food Vehicles must be movable by motorized or non-motorized means.

**B) 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 that term is defined in Section 49 of the City's Zoning ordinance.
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. Alternatively, a Mobile Food Vendor may operate from a Mobile Food Vendor Food Court site that is designed and intended for mobile food use as the primary use of the property. A concept plan will be required for a Mobile Food Vendor Court that is the primary use on a 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.
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.
5. Any permanent structure will require a building permit and be subject to any applicable regulations.
6. Two sandwich board signs may be used on-site during business hours. All other signage must be on the truck or trailer and mounted flush to the surface of the unit.

**C) 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.

**D) Mobile Food Vendor Permit Application.** The application for a Mobile Food Vendor permit shall include the following information:

1. an application fee of \$400;
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;
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 Bastrop County;
12. if the mobile vending unit will be placed in one (1) location for more than four (4) hours, a written agreement from a business within one hundred fifty (150) feet for employees of the mobile food establishment to have use of flushable restrooms (or other facilities as approved by the health authority) during hours of operation;
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.

## **E) 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;
  - 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 expire on October 31, 2019.
4. Permit fees will not be prorated. Other fees related to the construction of a Mobile Food Vendor Food Court will be required during the review and construction of the Mobile Food Vendor Food Court.

## **F) 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.

The written notice shall include:

- a. the reason(s) the permit is subject to revocation; and



b. if applicable:

1. the date on which the permit is scheduled to be revoked; and
  2. 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 (10<sup>th</sup>) day after the date the notice is served.
3. The applicant may appeal the revocation of a permit by submitting a written request for appeal along with any evidence supporting the appeal to the Board of Appeals within ten (10) days of receiving the notice of revocation. The Board of Appeals 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 Appeals' decision shall be final.

#### **G) 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.

#### **H) Penalty.**

A violation of this ordinance is considered a violation pertaining to fire safety, zoning, public health and/or sanitation and is punishable by a fine not to exceed two thousand dollars (\$2,000.00) in accordance with City Code Section 1.01.009.

**SECTION 6: REPEALER:** In the case of any conflict between the other provisions of this ordinance and any existing ordinance of the City, the provisions of this ordinance will control.

**SECTION 7: SEVERABILITY:** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, that invalidity or the unenforceability will not affect any other provisions or applications of this ordinance that can be given effect without the invalid provision.

**SECTION 8: ENFORCEMENT:** The City shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person violating any provision of this ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations, and such violation is hereby declared to be a nuisance.

Nothing in this ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law and/or equity.

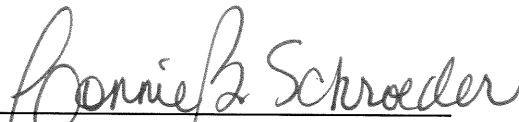
**SECTION 9: EFFECTIVE DATE:** This ordinance shall be effective on May 1, 2019.

**SECTION 10: PROPER NOTICE & MEETING:** It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

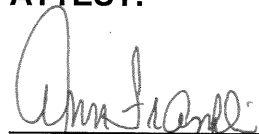
**READ and APPROVED** on First Reading on the 9<sup>th</sup> day of April 2019.

**READ and ADOPTED** on Second Reading on the 23<sup>rd</sup> day of April 2019.


**APPROVED:**

  
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Connie B. Schroeder, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Alan Bojorquez, City Attorney