

ORDINANCE NO. 2020-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS ("CITY") TO AMEND ARTICLE 4.04 - PEDDLERS, SOLICITORS AND VENDORS AND ADOPT DIVISION 4 – REQUIREMENTS APPLICABLE FOR MOBILE FOOD VENDORS IN THE BASTROP, TEXAS CODE OF ORDINANCES; PROVIDING FOR FINDINGS OF FACT, PURPOSE, ADOPTION AND AMENDMENT, REPEALER, SEVERABILITY, ENFORCEMENT, 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 Food Units 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: PURPOSE: This ordinance establishes regulations for Mobile Food Vendors. The purpose of the regulations is to ensure 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 3: ADOPTION AND AMENDMENT: The City Council hereby adopts the Mobile Food Vendor regulations, as attached in Exhibit A.

SECTION 4: 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 5: 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 6: 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.

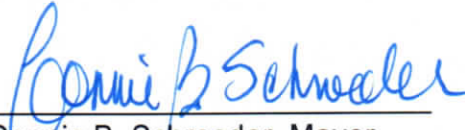
SECTION 7: EFFECTIVE DATE: This ordinance shall be effective immediately upon passage and publication.

SECTION 8: 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 28th day of April 2020.

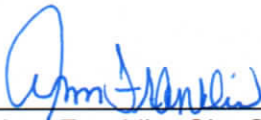
READ and ADOPTED on Second Reading on the 12th day of May 2020.

APPROVED:



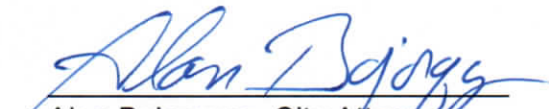
Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

Exhibit A

ARTICLE 4.04 - PEDDLERS, SOLICITORS AND VENDORS

DIVISION 1. – GENERALLY

Sec. 4.04.001 - Definitions.

As used in this section, 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.

Commissary. 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.

Event. Any occasion or activity where one or more vendors offer goods, services, entertainments, amusements or other like products or activities to the public for profit or for free.

Franchisee. A business entity with whom the city has a current contractual agreement, which entitles the entity to use city rights-of-way or easements for the provision of the entity's services to citizens of the community.

Health Authority. 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.

Lot Diagram Plan. 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.

Mobile Concession Trailer. 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.

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

Mobile Food Truck. A self-contained motorized unit selling items defined as edible goods.

Mobile Food Vending Unit. A Mobile Food Truck, Mobile Food Cart, Concession Cart, or Mobile Concession Trailer.

Mobile Food Vendors. Any business that operates or sells food for human consumption, hot or cold, from a Mobile Food Vending Unit.

Mobile Food Vendor Food Court. A site designed for the operation of one or more Mobile Food Vendors as the primary use.

Motor vehicle. Any vehicle used for the displaying, storing or transporting of articles for sale by a peddler, solicitor, and/or vendor, which is required to be permitted and registered by the state. The term also includes trailers, trucks and automobiles.

Peddler. Any person, entity or organization (other than nonprofit organizations as that term is defined herein), whether a resident of the city or not, that offers merchandise for sale along the streets or rights-of-way, on private or public property, or from door to door.

Peddling, soliciting and/or vending activities. The practices of peddlers, solicitors and/or vendors, as described in this article.

Permit. The document(s) issued by the city authorizing the peddling, soliciting or vending activities, pursuant to this article.

Permittee. The holder of a permit issued by the city issued pursuant to this article.

Solicitation activities. The practices of solicitors as listed in this section.

Solicitor. Any person, whether a resident of the city or not, including an employee or agent of another, traveling either by foot, automobile, truck, or other type of conveyance, who engages in the practice of going door-to-door, house-to-house, or along any streets within the city for the purpose of requesting contribution of funds, soliciting money, property or anything of value, or soliciting the pledge of any type of future donation; or selling or offering for sale any type of property, including but not limited to the sale and/or distribution of goods, tickets, books and pamphlets, for commercial or noncommercial purposes (including but not limited to solicitations for and sales of political, charitable, or religious documents and/or items).

Temporary/seasonal and/or multiple-vendor activity. Those activities that: (1) take place at a single, central location and which are organized and conducted by a single permit applicant for the purpose of holding an event during which two (2) or more vendors, solicitors or peddlers intend to offer goods, wares, services, etc. (for example, a sidewalk bazaar sale), and/or (2) involve vending, soliciting, or peddling of items that are only seasonally available and/or are only envisioned to be temporarily sold within the community. Permits for temporary/seasonal and multiple-vendor activities may only be ongoing for a maximum period as stipulated in the applicable permit (i.e.; either thirty (30), sixty (60) or ninety (90) consecutive days), in any twelve-month period during which a permit is issued by the city. No temporary/seasonal and/or multiple-vendor activity shall be permitted within the city or at the same locale for periods exceeding the above-noted periods of time, as specified on the applicable

permit. When the permittee conducts temporary/seasonal and/or multiple-vendor activities, and conducts such activities from a temporary/seasonal and/or multiple-vendor structure, the permittee shall be required to disassemble and remove the temporary/seasonal and/or multiple-vendor structure (including specifically all tables, booths, tents, canopies, shelves, racks, displays, buildings, storage containers, and all other items used to store and/or display merchandise, products or services) from the location used by the permittee at the close of each day of operation. This does not include Mobile Food Vendors.

Temporary/seasonal and/or multiple-vendor permit. The document issued by the city authorizing activities pursuant to this article, not including Mobile Food Vendors.

Temporary/seasonal and/or multiple-vendor personnel. All personnel working with, for or otherwise employed by or associated with vendors who have obtained a temporary/seasonal and/or multiple-vendor permit pursuant to this article.

Temporary/seasonal and/or multiple-vendor structure. Those temporary buildings, facilities, tents, enclosed spaces, trailers, and other mobile structures which are constructed, assembled or otherwise provided by entities who have or seek to obtain a temporary/seasonal and/or multiple-vendor permit from the city, with such structure to be used solely for the purpose of displaying, exhibiting, carrying, transporting, storing, selling, taking orders for, or offering for sale or offering to take orders for the wares, products, or merchandise made available for sale, or taking orders for or offering to sell or take orders for the temporary/seasonal and/or multiple vendors' products, wares or merchandise. Such structures shall include but not be limited to any tables, booths, tents, canopies, shelves, display racks, storage buildings or containers and other items used to store and/or display merchandise, products or services. This does not include Mobile Food Vendors.

Vendor. An individual, including an employee or agent of a group of individuals, partnership or corporation, who sells or offers to sell merchandise or provides entertainment or recreational services from a venue, stand, or motor vehicle or from the person, and specifically includes those conducting temporary/seasonal and/or multiple-vendor activities, as defined herein.

Site Plan. Engineered or surveyed drawings depicting proposed development of land. Meets the requirements of Section 1.3.003 Site Plan Application and Review of the B³ Technical Manual.

Texas Food Establishment Rules or the Rules. Refers 25 Texas Administrative Code chapter 228, as amended.

Section 4.04.002 – Findings; purpose.

(e) Mobile Food Vending has special considerations and regulations necessary to protect the public health, safety and welfare. Any vendor that will be selling food items is subject to the regulations in Division 4.

DIVISION 4. – REQUIREMENTS APPLICABLE TO ALL MOBILE FOOD VENDORS.

Sec. 4.04.100 - Required

1. No person shall act as a Mobile Food Vendor in the City without a permit issued by the City.
2. Mobile Food Vendors must meet all applicable state and local laws and regulations, including but not limited to the Rules.
3. Each Mobile Food Vendor shall display at all times in a conspicuous place where it can be read by the general public:
 - i. the City of Bastrop permit under this article and permit number.
 - ii. a health permit from Bastrop County.
 - iii. a copy of a Texas sales tax and use certificate.
4. 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.
5. The site must be located in Place Type Districts P4 – Mix and P-5 Core, as adopted in Chapter 3 of the Bastrop Building Block (B³) Code.
6. The site 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.
7. Mobile Food Vendors must meet all applicable laws regarding Mobile Food Vendors as described in the International Building Code (IBC) and International Fire Code (IFC), as adopted and amended by the City.
8. 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.
9. Electricity shall be from a generator or permanent connection in a Mobile Food Court and the Mobile Food Vendor shall utilize electrical cords in conformance with the National Electrical Code as adopted and amended by the City.
10. Any Mobile Food Vendors that prepare food outside of the Unit 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, 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.

11. For Mobile Food Vendors that sell prepackage food or prepare food within the Unit must keep a manifest of all food supply with purchasing sources for inspection at any time.
12. All employees of the permit holder must have a valid food handler's training certificate.
13. 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.
14. 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~~ only allowed when the connections have been properly permitted and inspected by the Building Official or designee.
15. 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.

16. 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.
17. Except as shown on an approved Site 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.
18. Mobile Food Vendors must comply with Chapter 6 – Public Nuisances.
19. Mobile Food Vendors must comply with the Bastrop Building Block (B³) Code – Article 6.6 Outdoor Lighting.
20. Drive-through service from Mobile Food Vendors is prohibited.
21. Alcohol sales must show proof of Texas Alcoholic Beverage Commission (TABC) authorization.
22. A copy of required 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.

Section 4.04.101 – Categories of Mobile Food Vendor Permits

A) Mobile Food Vendor in an approved Mobile Food Court.

1. 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. An approved Site Plan will be required for a Mobile Food Vendor Court that is the primary use on a property. Deviations from the requirements found in Section 6.5.001 Permitted Building Types per Place Type, and Section 6.5.003 (A) Lot Occupation may be approved by Development Review Committee when considering the lot layout of a specific site.
2. Utility hookups for water, wastewater, and electric must be provided by the property owner for each Vending Unit.
3. The Food Court will provide permanent restroom facilities on site.

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 site plan amendment and building permit and be subject to any applicable regulations.
6. Two sandwich board signs for each vendor 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.
7. Signage for the Mobile Food Court shall be in compliance with the B³ Code.
8. Mobile Food Courts may use fencing, landscaping which is a minimum three (3) feet tall at maturity, or other approved architectural element to meet the required façade at build-to line requirements with approval by the Development Review Committee. The screening shall meet the intent of the B³ Code by creating a street room, clear access point(s), and walkable environment.

B) Mobile Food Vendor located on an existing, developed site with a Primary Use.

1. A Mobile Food Vendor may operate from a property with an existing permanent business operating in a building with a current Certificate of Occupancy.
2. A Mobile Food Vendor with an approved lease agreement with the city may be located in a city park or property.
3. The permanent business must provide restroom facilities for use by the employees of the Mobile Food Vendor. Written proof of a restroom facility agreement that provides the availability of a fixed establishment restroom for the use of the Mobile Food Vendor employees located in a business establishment within one-hundred fifty (150) feet of each location where the Mobile Food Vending Unit will be in operation.
4. The Mobile Food Vending Unit cannot obstruct driveways or fire lanes.
5. No permanent seating areas can be established. Temporary seating which is removed and stored daily within the Mobile Food Vendor or existing permanent structure may be allowed.
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.
7. Location of the Mobile Food Vending Unit and any temporary seating areas must be shown on a lot diagram.

C) Temporary Mobile Food Vendors:

1. Mobile Food Vendors must be located on a property for less than four hours.
2. All locations the vendor may occupy will be submitted to the City.
3. The Mobile Food Vending Unit cannot obstruct driveways or fire lanes.
4. Mobile Food Vendors that will vend in a city park, property, or right-of-way will require additional approval by the Director of Public Works.

Section 4.04.102 - Mobile Food Vendor Permit Application. The application for a Mobile Food Vendor permit shall include the following information:

1. an application fee as adopted in Section A4.04.
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 lot diagram, if applicable;
11. a copy of the vendor's current health permit from Bastrop County;

12. For a Mobile Food Vendor located on an existing site, 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 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, or retailer sources for food items to be cooked onsite or for resale;
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.

D) 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) working 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 will be valid from the date of issuance to the expiration date listed on each permit. Permits may be renewed for a set time period and fees will be assessed in accordance with Appendix A.

E) Mobile Food Permit Denial.

1. If a Mobile Food Vendor Permit is denied, the applicant may appeal the decision to the City Manager or City Manager's designee.
2. The applicant must provide information demonstrating that strict adherence to the regulations of this ordinance is not applicable to the specific situation. The applicant must show that the proposed activity meets the intent of the ordinance.
3. The decision of the City Manager or City Manager's designee may be appealed to City Council.

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 (10th) 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.

Sec. A4.04. - Peddlers, solicitors and vendors.

SEC Reference	Last updated	Description	Amount of fee
A4.04.	Ordinance 2020-02	Mobile Food Court – Mobile Food Vendor	
		Six Month	\$400.00
		Per Year	\$600.00
	Ordinance 2020-02	Accessory to Primary Use - Mobile Food Vendor	
		Six Month	\$1,300.00
		Per Year	\$2,400.00
	Ordinance 2020-02	Temporary Mobile Food Vendor Permit	
		Three Day	\$350.00
		Three Months	\$1,200.00