

AN ORDINANCE OF THE CITY OF MARSHALL AMENDING PROVISIONS OF THE CODE OF ORDINANCES RELATING TO FOOD AND FOOD ESTABLISHMENTS; PROVIDING FOR PENALTIES; PROVIDING FOR PUBLICATION AND ESTABLISHING AN EFFECTIVE DATE FOR SUCH ORDINANCE.

WHEREAS, the City Commission of Marshall wishes to amend in its entirety Chapter 13A of the Code of Ordinances entitled "Food and Food Establishments".

THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MARSHALL, TEXAS:

Section 1. That the findings set out in the preamble of this ordinance are hereby in all things approved.

Section 2. Amendment to Chapter 13A of the Code of Ordinances:

"Section 13.A Food and Food Establishments

Article I. In General

Section 13A-1 Adoption of Texas Food Establishment Rules

(a) Texas Food Establishment Rules adopted. The city adopts by reference the provisions of the current rules or rules as amended by Texas Department of State Health Services (TX DSHS, Division found in 25 Texas Administrative Code, Chapter 228, regarding the regulation of food establishments in this jurisdiction.

Section 13A-2. Permits, Inspections, Fees & Exemptions

(a) Permit Required. A person may not operate a food establishment without a permit issued by the regulatory authority. Permits are not transferable from one person to another or from one location to another location. A valid permit must be posted in or on every food establishment regulated by this section.

(b) Application Process. 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 the name and address of each applicant, the location and type of the proposed food establishment and the applicable fee. An incomplete application will not be accepted. Failure to provide all required information, or falsifying information required may result in denial or revocation of the permit. Renewals are required on an annual basis and the same information is required for a renewal permit as for an initial permit.

(c) Inspection Required. Prior to the approval of an initial permit or the renewal of an existing permit, the regulatory authority shall inspect the proposed food establishment to determine compliance with state regulations and this section. A food establishment that does not comply with state regulations or this section will be denied a permit or renewal of a permit. Denial of access to the regulatory authority shall be cause for suspension or revocation of the food establishment permit.

(d) *Proof of Pest Control.* Each food establishment must have regular pest control inspections completed by a licensed pest control company at a minimum of every six months. At the time of all renewal permit inspections, a copy of the most recent pest control report must be provided to the regulatory authority. Failure to do so will result in denial of a renewal permit.

(e) *Inspection Scoring.* All food establishments shall be inspected and scored uniformly using an official inspection form, as provided by the Texas Department of State Health Services. The score of each food establishment shall be determined by the regulatory authority using the scoring method provided on the inspection form. Establishments scoring below 70 percent will be closed until such time that a re-inspection is made and all corrective action on all identified critical violations is complete. Corrective action on all other violations must be initiated within 48 hours. The establishment shall remain closed until reopened by the health authority.

(f) *Posting of Inspection Score Cards.* The regulatory authority will provide the food establishment with a score card at the completion of each inspection. The score card shall be posted in a conspicuous place, so as to be clearly visible to the general public and to patrons entering the establishment. "Clearly visible to the general public and patrons" shall mean:

- (1) *Posted in the front window of the establishment within five feet of every public entrance;*
- (2) *Posted in a location as directed and determined at the discretion of the regulatory authority to ensure proper notice to the general public and to patrons; and/or*
- (3) *In the event that a food establishment is operated in the same building or space as a separately licensed or permitted business, or in the event that a food establishment shares a common patron entrance with such a separately licensed or permitted business, or in the event of both, the regulatory authority shall post the score card in the initial patron contact area, or in a location as determined in the discretion of the regulatory authority.*

(g) *Fees.* All fees associated with this section shall be approved by the City Commission on the City's master fee schedule kept on file in the regulatory authority's office.

(h) *Exemption.* A food establishment operated solely by a nonprofit organization is exempt from the permitting requirements of this section, but is not exempt from compliance with state rules. The regulatory authority may require any information necessary to determine whether an organization is a nonprofit for purposes of this exemption.

Section 13A-3. Review of Plans

(a) *Review Required.* Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the regulatory authority for review prior to work starting. Extensive remodeling means that 20% or greater of the area of the food establishment is to be remodeled. 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/facilities. The plans and specifications will be approved by the regulatory authority if they meet the requirements of the rules adopted by this ordinance. The approved plans and specifications must be followed in construction,

remodeling or conversion. Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.

Section 13A-4. Food Manager Qualification

(a) Every food establishment shall have on duty at all times when open at least one (1) manager or person left in charge who holds a Food Protection Manager Certificate by an accredited agency which is recognized by the Conference for Food Protection Standards.

Section 13A-4. Temporary Food Establishments

(a) Generally. A temporary food establishment shall comply with all provisions of this chapter which are applicable to its operation; provided, that the health authority may augment such requirements when needed to assure the service of safe food, may prohibit the sale of certain potentially hazardous food, and may modify specific requirements for physical facilities when in his opinion no imminent health hazard will result.

(b) Permits. Application for permits must follow the applicable requirements laid out in this section in addition, all temporary food establishment permits shall submitted two (2) weeks prior to the event needing the permit.

Section 13A-5. Mobile Food Vendors

(a) Mobile Food Vendor Defined. A mobile food vendor shall mean any business which sells edible goods from a non-permanent (i.e. mobile) location. The term shall include, but not limited to:

(1) Mobile food trucks: A self-contained motorized unit selling items defined as edible goods.

(2) Concession Carts: Mobile vending units that must be moved by non-motorized means.

(3) Concession trailers: A vending unit which is pulled by a motorized unit and has no power to move on its own.

(4) Mobile food trucks, carts or trailers that are utilized for private catering events are exempt from the rules provided in this section.

(b) Rules Compliance. All mobile food vendors shall comply with all applicable rules of the Texas Food Establishment Rules.

(c) Permit. All mobile food vendors must receive a permit and be inspected as described in Section 13A-2 of this section.

(d) Location. All mobile food vendor units shall be parked on a commercially zoned lot and not located on a residentially zoned property. A mobile food vendor shall be located on private property with the property owner's written permission. No mobile food vendor may be located within 24 feet of the property line of fixed-location food service establishment during the fixed location's regular business hours. This buffer may be reduced upon receiving written permission from said establishment.

(e) Stationary Restrictions. A mobile food vendor shall not be at a stationary location:

(1) For a duration of no more than five consecutive days at a location.

(2) For a duration exceeding ten hours per location per day.

(3) For a duration exceeding 30 minutes on any public street.

(4) In congested areas where the operation impedes vehicular or pedestrian traffic or where it impedes access to the entrance of any adjacent building or driveway.

(5) *In public parking spaces, except downtown between the hours of 5:30pm and 12:00am Monday through Friday and 8:00am to 2:00am Saturday and Sunday. During City of Marshall Main Street sponsored events located within downtown, mobile food vendors shall be located on East Austin Street between North Washington and Bolivar Street. The boundaries of downtown are defined for this section as:*

- a. *North of Travis Street.*
- b. *South of Grand Avenue (US Hwy 80)*
- c. *East of Grove Street*
- d. *West of Alamo Boulevard.*

(6) *Exceptions to this rule may be given if the mobile food unit is located on the same lot as the approved commissary for the mobile unit.*

(f) *Waste. Each unit shall be equipped with a trash receptacle with lid to prevent windblown litter and shall be disposed of in accordance with the city's solid waste ordinance. If liquid waste results from food processing of a mobile food vendor, the waste shall be contained in a permanently installed tank located on the vending unit. Liquid waste, solid waste, and recyclables shall be removed from a mobile vendor unit at a disposal site approved by the city or by a city permitted waste transporter. Removal of waste shall be in a manner that a public health hazard or nuisance is not created.*

(g) *Noise & Safety. No noise which is loud or noxious shall project from the mobile unit. A mobile unit must have a 2A:10B:C sized fire extinguisher with an annual inspection tag from a Texas licensed inspection company. The fire marshal's office is herein authorized to conduct all inspections necessary to determine the extent of compliance at any time.*

(h) *Signage. Signage shall comply with all applicable sign code regulations. Any signage for the mobile food unit must be mobile in design and be removed from the site. Signage shall not interfere with vehicular or pedestrian traffic.*

Section 13A-6. Suspension of Permit

(a) *The regulatory authority may, without warning, 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. Suspension is effective upon service of the notice required by Section 13A-6 of this section. When a permit is suspended, food operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within 20 days of a request for a hearing.*

(b) *Whenever a permit is suspended, the holder of the permit or representative 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 a hearing is filed within ten days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for the suspension no longer exist.*

Section 13A-7. Revocation of Permit

(a) *The regulatory authority may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules or for interference with the regulatory authority in performance of its duties. Prior to revocation, the regulatory authority shall notify the holder of the permit or representative, 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 such ten day period.

(b) If no request for a hearing is filed within the ten day period, the revocation of the permit becomes final.

Section 13A-8. Administrative Process

(a) A notice as required in the rules is properly served when it is delivered to the holder of the permit or representative, 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) The hearings provided for these rules shall be conducted by the regulatory authority at the time and place designated by it. Based upon the recorded evidence of such hearing, the regulatory authority shall make the 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.

Section 13A-9. Penalties

(a) Any person who shall violate any provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two thousand dollars (\$2,000.00). In addition thereto, such persons may be enjoined from continuing such violations. Each day upon which such violation occurs shall constitute a separate violation.

Section 13A-9 – 13A-87. Reserved"

Section 3. That the meeting at which this ordinance was passed was conducted in strict compliance with the Texas Open Meetings Act (Texas Government Code Chapter 551).

Section 4. That all other prior ordinances or portions of ordinances or portions of ordinances of the City of Marshall in conflict with the terms and provisions of this ordinance are hereby repealed to the extent of such conflict only.

Section 5. That the repeal of any ordinance or portion of any ordinance by this ordinance shall not affect the validity of any pending enforcement action or fines outstanding and due and payable on or before the effective date of this ordinance.

Section 6. That if any section, paragraph, subdivision, clause, phrase, or provision of this ordinance is hereafter determined to be invalid or in violation of the laws of the State of Texas or the Constitution of the United States by of court of appropriate jurisdiction, such finding of invalidity shall affect the continued enforcement only of the provision or provisions so determined to be invalid, it being the intent of the City Commission of the City of Marshall that all other terms and provisions of this ordinance not affected shall remain in full force and effect.

Section 7. That this ordinance shall be effective from and after its passage and publication as required by law.

PASSED AND APPROVED THIS 26th DAY OF September, 2019.

AYES: 4

NOES: 1

ABSTAINED: 0

PASSED, APPROVED AND ADOPTED ON THIS 3rd DAY OF October, 2019.

AYES: 5

NOES: 0

ABSTAINED: 0

Jerri W. Brown
MAYOR OF THE CITY COMMISSION
OF THE CITY OF MARSHALL, TEXAS

ATTEST:

E Altman
Elaine Altman, City Secretary