

CITY OF FOREST HILL

ORDINANCE NO. 2010-02-001

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FOREST HILL, TEXAS, AMENDING CHAPTER 34, BUSINESS REGULATIONS, OF THE CITY'S CODE OF ORDINANCES RELATIVE TO THE REGULATION OF TEMPORARY, PORTABLE BUSINESSES; ESTABLISHING DEFINITIONS; ESTABLISHING PERMIT REQUIREMENTS; ESTABLISHING PLAN REVIEW REQUIREMENTS; ESTABLISHING FEES; ESTABLISHING MOBILE VENDING UNIT REQUIREMENTS; ESTABLISHING PUSH CART REQUIREMENTS; ESTABLISHING PRODUCE VENDOR REQUIREMENTS; ESTABLISHING GENERAL REQUIREMENTS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, additional temporary, portable business regulations are located in the Chapter 34 of the City's Code of Ordinances; and

WHEREAS, the City Council of the City of Forest Hill, Texas ("City Council") has investigated and determined that it would be advantageous and beneficial to the citizens of the City of Forest Hill, Texas ("Forest Hill") to adopt this ordinance regulating the conducting of business by mobile vendors, pushcart vendors, seasonal vendors, and produce vendors within the City of Forest Hill; and

WHEREAS, the City Council of the City of Forest Hill, Texas has determined that it is in the best interest of the public and in support of the health, safety, morals, and general welfare of the citizens of the City that the Code of Ordinances provisions relative to the regulation of said temporary or portable businesses, be established as hereinafter stated.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FOREST HILL, TEXAS THAT:

SECTION 1: LEGISLATIVE FINDINGS: All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2: Chapter 34, "Business Regulations" of the City of Forest Hill Code of Ordinances is hereby amended to hereinafter read as follows:

Chapter 34

Business Regulations

Article II. Temporary, Portable Businesses

Sec. 34-31. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this article, shall have the meanings hereinafter designated.

Beverage: a liquid for drinking, including water.

Change of ownership: a change of owner or operator of the business, and does not refer to a change of owner of the building where the business is located.

Commercially manufactured vehicle: a vehicle originally manufactured as a mobile food vehicle to be used for the preparation of open potentially hazardous food, which was manufactured by a person regularly in the business of manufacturing mobile food vehicles for sale. Commercially manufactured vehicles shall not include any vehicle that is converted or retrofitted to be a mobile food unit or vehicle.

Commissary: a fixed food service establishment permitted and regularly inspected for compliance with health regulations. NOTE: The City of Forest Hill does not recommend nor regulate commissaries.

Employee: any person manufacturing, packaging, producing, processing, storing, selling, offering for sale, vending, preparing, serving, or handling any food in a food establishment.

Fixed vending unit: a food service operation that is movable but remains on the premises during the entire time such permit is valid. Examples of this include, but are not limited to the following a snack bar, sno-cone stand, and beverage stand.

Food: any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

Food establishment: any place where food is manufactured, packaged, produced, processed, transported, stored, sold, commercially prepared, vended, or otherwise handled. The term includes any such place regardless of the duration of the permit or whether there is a charge for the food. The term does not include private homes where food is prepared or served for guests and individual family consumption.

Food handler: any person who prepares, serves, packages or handles open food or drink, or who handles clean utensils, pots, pans or single-service items.

Food operations means manufacturing, packaging, producing, processing, transporting, storing, selling, commercially preparing, or otherwise handling food, ice or drinks, whether offered for sale, given in exchange or given away for use as food or offered for human consumption.

Health department: the Tarrant County Health Department.

Mobile food unit: a vehicle-mounted food service operation designed to be readily movable and remains on the premises only during the operating hours. Examples of this include, but are not limited to barbecue vendors, roasted corn vendors, fruit and produce vendors, and lunch wagons.

Mobile food solicitor: a mobile food service unit powered either by human beings or a motorized means and does not remain at any location longer than sixty (60) minutes. Examples of this include, but are not limited to ice cream trucks, ice cream carts, and favored ice carts.

Nonpotentially hazardous food: all food that is not potentially hazardous food. The following list is exemplary of such food and shall not be construed to be exclusive of any other nonpotentially hazardous food:

- (a) Popcorn;
- (b) Shelled, unshelled, raw or roasted nuts; and
- (c) Pretzels.

Potentially hazardous food: a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms; the growth and toxin production of *Clostridium botulism*; or in raw shell eggs, the growth of *Salmonella enteritidis*.

Produce vendor: any person vending unprocessed fresh fruits, vegetables or other produce.

Pushcart: a mobile food unit powered by human beings only.

Seasonal food establishment: an establishment that operates more than fourteen (14) consecutive days but less than one hundred eighty (180) days each year, and not associated with a special event, at a fixed location in a temporary building; ie. Sno-Cone Stands, Snack Bar Stands, or Beverage Stands.

Single-service articles: tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use.

Temporary food service establishment: a food establishment that operates at a fixed location for not more than fourteen (14) consecutive days in conjunction with a single event or celebration.

Utensil: any food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multi-use, single-service, or single-use; glove used in contact with food; and food temperature measuring devices.

Sec. 34-32. Permits

- (a) No person shall operate a food establishment without a current, valid food establishment permit issued by the Planning Department.
- (b) Permits issued under the provisions of this article are not transferable. A permit shall be valid for the period of time shown on the face of the permit, unless earlier suspended or revoked by the Planning Department.
- (c) The application for a new or a renewed permit shall be made on an application form provided by the Planning Department.
 - 1. The application for a food establishment shall require the following information:
 - i. applicant's name,
 - ii. type of business organization,
 - iii. the name and address of the owner or principal officer of the business,
 - iv. the nature of the business,
 - v. the location of the business, and
 - vi. such other information as the Planning Department deems necessary.
 - 2. Applicant for permits for mobile food units, seasonal food establishments, pushcart operators, produce vendors, or temporary event establishments which operate from a fixed location shall be required to produce a notarized statement from the primary business owner / operator stating that the use of the restroom facilities will be available during the hours of operation for all employees as well as to customers should the applicants not be able to provide restroom facilities. The statement from the

primary business owner / operator needs to include language stating that he / she understands that should the vending unit be operating during preparation and/or vending without access to a restroom that the premises owner / operator shall be committing an offense.

3. Applicant for permits for any vending unit which operate from a fixed location shall be required to produce a notarized statement from the primary business owner / operator stating that the applicant has permission to utilize the premises during the vending units operating hours.
 4. Should the applicant wish to change locations during the valid permitted time of operation, then the applicant shall re-apply for a new permit with the address of the new location. No permit fee shall be required for newly issued permit with a location change but the new permit shall expire at the same time as the old permit.
- (d) No permit shall be issued, new or renewal, without the owner or operator of the food establishment providing proof of compliance with current minimum health department requirements as determined by the Tarrant County Health Department.
 - (e) Permit shall be denied if an applicant fails to provide a valid vehicle registration, motor vehicle operator's license, proof of vehicle liability insurance, and a Texas Sales Tax Permit.
 - (f) Owner/Operators, employees, and food handlers must obtain a Food Handler's Certification from the Health Department.
 - (g) The owner or operator of a food establishment shall post and maintain the current permit in a conspicuous public place in the establishment for which the permit was issued.
 - (h) A person commits an offense if the person owns, operates, or is in control of a food or vending establishment and knowingly:
 1. Is operating without a valid food permit
 2. Fails to post and maintain a permit in accordance with subsection (e)
 - (i) The zoning location of any vending unit which operate from a fixed location shall be allowed in Local Retail (LR), General Business (GB), Light Industrial (LI), or Planned Development (PD) only.

- (j) Owner/Operators and employees of a mobile food unit, temporary food service establishment, produce vendors and pushcarts shall obtain a criminal background check and be clear of any offenses classified as Felonies in the last ten (10) years.
- (k) No roadside vending shall be allowed within the city limits.
- (l) The Planning Department may deny a permit, or after notice suspend or revoke a permit for failure to comply with the requirements of this article or any state law adopted by this article. Notice of a permit denial shall be served upon the owner or operator of the food establishment either in person or by certified mail, return receipt requested, at the mailing address specified in the permit application.

Sec. 34-33. Plan Reviews.

When a food establishment is classified as a fixed vending unit then a plot plan or survey of the property depicting the location of all structures currently on the property and the proposed location of the vending unit shall be submitted to the Planning Department. The plan must show all required setbacks, building lines, and distances between all structures. Must depict commercially plumbed restroom facility locations.

All fixed vending units shall conform to the structural strength, fire safety, mean of egress, light, and ventilation requirements of the currently adopted International Building Code as necessary to ensure the health, safety, and general welfare of the general public.

Sec. 34-34. Fees

The city council shall adopt a schedule of fees for food establishment permits, including an additional fee for the reissuance of a permit after its expiration.

Sec. 34-35. Mobile Vending Units

- (a) Mobile barbecue trailer cooking surfaces shall be tightly enclosed and constructed in such a way as to protect all food contact surfaces from possible contamination both in transit and during use.
- (b) All mobile food units and pushcarts handling open potentially hazardous foods is recommended to operate from a commissary or other fixed food service establishment that are regularly inspected by a regulatory health agency and should service and clean the unit at least once a day.
- (c) All mobile food units handling open potentially hazardous foods shall be commercially manufactured. This shall not apply to sno-cone

vendors, pre-packaged ice cream, corn roasters, or other foods as determined by the Planning Department.

- (d) All mobile food units handling open foods shall have a servicing area which shall have overhead protection, a location(s) for draining and flushing liquid wastes, and a location(s) for the loading and unloading of food and related supplies.
- (e) All liquid waste containers shall be thoroughly flushed and drained daily. Flushing and draining activities shall not be performed on public streets, on any private or public property, or any area other than a servicing area of a commissary.
- (f) Liquid waste retention tanks shall have a minimum capacity that is at least fifteen (15) percent larger in capacity than the fresh water supply tank.
- (g) All mobile food units handling open potentially hazardous foods shall provide not less than fifteen (15) gallons of hot/cold water under pressure at all times for the use in utensil cleaning, sanitizing, and hand washing. A single water inlet shall be located so as not to be contaminated by waste discharge. Such inlet shall be capped at all times except when being filled, and shall contain only potable water. Connections or direct water hook-up sources other than those on the vending unit shall not be allowed unless approved by the Building Official.

Sec. 34-36. Pushcarts

- (a) Each pushcart vending open food shall have a conveniently accessible supply of paper towels, soap and detergent
- (b) Pushcarts shall provide only single service articles for use by consumers.
- (c) A cleanable canopy shall extend over the pushcart and cover its top surface.
- (d) Separate space shall be set aside from areas where food is served or prepared for nonfood related items which are displayed on pushcarts.
- (e) Each pushcart shall have a stainless steel hand wash lavatory and a stainless steel sink with a minimum of two (2) compartments when utensil washing is required on the pushcart. Both will have adequate amounts of hot and cold water under pressure. Each pushcart shall also have adequate drainboard space. This part (4) does not apply to pushcarts vending only prepackaged food products.

- (f) Each pushcart employing butane or propane tanks shall comply with any and all applicable fire department regulations and obtain an inspection from the Fire Marshall. Ground fault interrupters may be required by the fire department as a safety feature to prevent electrical shock. Each pushcart shall be equipped with an approved fire extinguisher with a 2A 10BC rating.
- (g) Foods must be stored, displayed and served in a fly and rodent proof manner. Properly installed sneeze guard shields shall be used during food preparation. Scooped ice cream sellers shall have a running water dipper well.
- (h) All food and condiments shall be dispensed in a sanitary manner.
- (i) Pushcart operators shall not cook on or adjacent to a pushcart.
- (j) Pushcarts which stock and sell potentially hazardous food shall maintain each compartment or area used for storage, display or service of potentially hazardous food shall be maintained at proper temperatures for the food item stored therein. Hot foods shall be kept at 140°F or above; cold foods shall be kept at 41°F or below; and frozen foods shall be maintained frozen.

Sec. 34-37. PRODUCE VENDORS

- (a) Fresh fruits, vegetables or other produce displays shall be confined to the bed of a vehicle or to tables that are at least six (6) inches above the ground.
- (b) Fresh produce shall not be cut or sliced.

Sec. 34-38. Other General Requirements for all vendors

- (a) Shall provide a sanitary restroom facility built in the mobile unit or have access to the primary business owner's commercially plumbed restroom that provides hot and cold running water through a mixing valve or combination faucet and is within three hundred (300) of the unit and that shall be accessible during the hours of operation for the vending unit.
- (b) Food and non food items shall not be sold from the same vending unit
- (c) No onsite dining shall be allowed.

- (d) The owner or operator of a vending unit commits an offense if the unit is operated in violation of any provisions of this section
- (e) Solid waste shall be contained in an easily cleanable, self-closing, lidded trash receptacle which shall be kept on or near the food establishment unit at all times. The area around the unit shall be kept clean and free from litter, garbage, and debris in a radius area of twenty-five (25) foot from the vending unit.
- (f) All evidence of a vending unit must be removed from the premises each day after operations have ceased.
- (g) Hours of operation are limited to the hours between 7:00 a.m. to 10:00 p.m. daily
- (h) No mobile vending unit may operate within 50 feet from a single-family or multi-family residential use. Single-family or multi-family residential use shall not include a residence that is part of a business or a mixed-use structure.
- (i) All mobile vending units must park on an improved surface
- (j) No mobile vending unit may be located on a vacant lot or on a lot if the primary business does not have a valid Certificate of Occupancy.
- (k) No mobile vending unit, displays of merchandise, seating, or temporary shelters may obscure traffic.
- (l) No mobile vending unit shall be allowed to sell merchandise, sell, or serve food on any public street, sidewalk, or other public right-of-way.
- (m) All mobile vending units handling or selling potentially hazardous food products must be a commercially manufactured vehicle as defined in this ordinance.
- (n) No more than one mobile vending unit per individual tract, parcel or platted lot shall be allowed.
- (o) No offsite signage shall be allowed.

SECTION 3: SEVERABILITY. If any section, subsection, article, paragraph, sentence, clause, phrase or word in this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares it would have passed such remaining portions of this

Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 4: REPEAL OF CONFLICTING ORDINANCES. All ordinances, orders and resolutions heretofore passed and adopted by the City Council of the City of Forest Hill, Texas are hereby repealed to the extent said ordinances, orders or resolutions or parts thereof are in conflict herewith, except for the City's Zoning Ordinance unless repealed or amended consistent with state law and city ordinance.

SECTION 5: PROPER NOTICE AND MEETING. It is hereby officially found and determined that the meeting at which the 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, Chapter 551 of the Texas Government Code.

SECTION 6: EFFECTIVE DATE. This Ordinance shall be and become effective immediately upon and after its passage and publication as may be required by governing law.

DULY PASSED, APPROVED AND ADOPTED by the City Council of the City of Forest Hill, Texas on this 2nd day of February, 2010.

APPROVED:

James Gosey, Mayor

ATTEST:

Debra Maness, City Secretary

APPROVED AS TO FORM:

Alicia Johnson, Interim City Attorney