

AN ORDINANCE OF THE CITY OF MARSHALL AMENDING PROVISIONS OF THE CODE OF ORDINANCES, SECTION 13A ENTITLED “FOOD AND FOOD ESTABLISHMENTS” RELATING TO FOOD AND FOOD ESTABLISHMENTS; PROVIDING FOR PENALTIES; PROVIDING FOR PUBLICATION AND ESTABLISHING AN EFFECTIVE DATE FOR SUCH ORDINANCE.

WHEREAS Council for the City of Marshall (“the Council”) finds that ordinances regulating food and food establishments promote the health and welfare of its citizens; and

WHEREAS the Council finds that the existing ordinance regulating food and food establishments is in need of updating; and

WHEREAS, the Council 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 COUNCIL 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. Chapter 13A of the Code of Ordinances is amended to read as follows:

“Chapter 13A FOOD AND FOOD ESTABLISHMENTS

ARTICLE I. IN GENERAL

Sec. 13A-1. Adoption of Texas Food Establishment Rules.

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 Division (TX DSHS), found in Title 25, Texas Administrative Code, Chapter 228, regarding the regulation of food establishments in this jurisdiction.

Sec. 13A-2. Definitions.

For purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Authority Having Jurisdiction (AHJ) – Shall mean those members in the Community Development Department that are responsible for and are licensed to perform building, plumbing, and electrical inspections, and the City of Marshall Fire Marshal's Office.

Regulatory Authority – Those members of the Community Development Department of the City who are responsible for consumer health and are licensed to perform food service inspections (the "Consumer Health Division"), or the entity that succeeds to the duties of that department.

Sec. 13A-3. Permits, Inspections, Fees and 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 (1) person to another or from one (1) 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 and AHJ 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 members of the Regulatory Authority or AHJ 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 (6) 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 seventy (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 forty-eight (48) hours. The establishment shall remain closed until reopened by the Regulatory 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 (5) 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 Council on the City's master fee schedule kept on file in the Regulatory Authority's office.

Sec. 13A-4. Review of Plans.

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 twenty (20) percent 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 chapter. 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.

Sec. 13A-5. Food Manager Qualification.

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.

Sec. 13A-6. 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 Regulatory 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 be submitted two (2) weeks prior to the event needing the permit.

Sec. 13A-7. Mobile Food Units.

- (a) *Mobile Food Unit Defined.* A Mobile Food Unit 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 Truck:* A self-contained motorized unit selling items defined as edible goods.
 - (2) *Mobile Food Cart:* A mobile vending unit that must be moved by non-motorized means.
 - (3) *Mobile Food Trailer:* A vending unit which is pulled by a motorized unit and has no power to move on its own.
- (b) *Compliance.* All Mobile Food Units shall comply with the current version of Texas Administrative Code, Title 25, Chapter 228 - Texas Food Establishment Rules (TFER), International Fire Codes (IFC), the standards promulgated by the National Fire Protection Association (NFPA), the rules and regulations promulgated by the Texas Commission on Environmental Quality, and Texas Water Code.
- (c) *Permit.* All Mobile Food Units must receive a permit and be inspected as described in section 13A-3 of this chapter.
- (d) *Location.*
 - (1) A Mobile Food Unit shall be parked on a commercially zoned property. If the Mobile Food Unit is not the property owner, they must receive written approval from the property owner.
 - (2) A Mobile Food Unit may not be located within twenty-four (24) feet of the property line of a fixed food establishment during the fixed food establishment's regular business hours. This buffer may be reduced upon receiving written permission from said establishment.
 - (3) A Mobile Food Unit shall be self-sustainable. Shared resources may only be used when approved by the Regulatory Authority or AHJ.
- (e) *Stationary Restrictions.*

“Stationary Location” shall mean the location of the Mobile Food Unit when not in motion and when set up and arranged for the purpose of making sales to the public.

“Operating Hours” shall mean: 5:30 p.m. to 11:00 p.m. (Monday – Friday), 8:00 a.m. to 11:00 p.m. (Saturday), and 10:00 a.m. to 8:00 p.m. (Sunday).

The following restrictions apply to a Mobile Food Unit’s location:

- (1) A Mobile Food Unit shall not be at a Stationary Location for a period exceeding ten (10) hours per location per day;
- (2) A Mobile Food Unit shall not be in congested areas where the operation of the Mobile Food Unit impedes vehicular or pedestrian traffic;
- (3) A Mobile Food Unit shall not be where it impedes access to the entrance of any adjacent building or driveway;
- (4) A Mobile Food Unit shall not be in downtown public parking spaces, unless specifically designated and approved by the Regulatory Authority or AIHJ, and only during Operating Hours as defined in this section. For the purpose of this section, downtown means those areas within the following boundaries:
 - a. North of Travis Street;
 - b. South of Grand Avenue (US Hwy 80);
 - c. East of Grove Street; and
 - d. West of Alamo Boulevard.
- (5) A Mobile Food Unit shall not be parked in city public recreational areas unless specifically designated and approved by the Regulatory Authority or AIHJ. For this section, city public recreational areas include the following locations:
 - a. Marshall Civic Center;
 - b. Marshall City Arena;
 - c. Airport Park Sports Complex;
 - d. Marshall City Park;
 - e. City of Marshall Golf Course;
 - f. Marshall Public Library;
 - g. Smith Park;
 - h. Lions Park;
 - i. Bath Miller Park; and
 - j. Bella Wyatt Park
- (6) Exemptions to stationary restrictions:
 - a. A Mobile Food Unit may remain at a Stationary Location, only if the Stationary Location contains a central preparation facility, commissary, or

other fixed food service establishment, used as a base of operation for the Mobile Food Unit.

- b. A Mobile Food Unit may remain permanently at a Stationary Location if a Mobile Food Unit has been approved under a special event permit by the Regulatory Authority or AHJ.
 - c. A Mobile Food Unit that is utilized for private catering events are exempt from the requirements of Sec. 13A-7(d) and Sec. 13A-7(e)(1).
- (f) *Waste.* Each Mobile Food 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 Unit, the waste shall be contained in a permanently installed tank located on the Mobile Food Unit. Liquid waste, solid waste, and recyclables shall be removed from a Mobile Food 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) *Fire & Life safety.* The Fire Marshal's Office is herein authorized to conduct all fire and life safety inspections necessary to determine the extent of compliance at any time. The City adopts by reference the excerpts of the current International Code Council and National Fire Protection Association Resources as noted: IFC, IBC, NFPA 1, NFPA 58, NFPA 70, and NFPA 96 regarding the regulation of Mobile Food Units in this jurisdiction.
- (1) Requirements for Mobile Food Units using Liquid Petroleum Gas (LPG): All Mobile Food Units using LPG shall abide by the following standards, requirements and restrictions:
- a. All Mobile Food Units using Liquid Petroleum Gas (LPG) shall present a valid invoice from a Licensed Plumber indicating an annual pressure/ gas test has been successfully completed upon request of the Regulatory Authority or the AHJ. Presentation of such an invoice shall be required for initial permitting and permit renewal.
 - b. LPG piping on Mobile Food Units shall be of an approved, labeled and listed type for use with the cooking appliances. Rubber type hoses shall not be allowed. All piping shall be in accordance with the recently published NFPA 58 and shall be protected against physical damage.
 - c. Food Trucks shall have a maximum of 200 gallons of LPG contained in an ASME motor fuel cylinder located a vented compartment in front of the rear bumper and behind the front axle.
 - d. Food trailers shall have a maximum of 200 gallons of LPG contained in tanks located outside inhabited portions of the trailer, mounted upon the trailer in a protected location in front of the rear bumper in an open or vented uninhabited compartment.
 - e. LPG cylinders shall not exceed 100 pounds.
 - f. LPG cylinders shall have an approved label and listed shut-off valve.

- g. All LPG cylinders shall be protected from damage and secured with a solid bracket.
 - h. The storage of LPG cylinders inside trucks and/ or trailers during hours of operation is prohibited.
 - i. All valves must be turned off when appliances/ cylinders are not in use and during transport.
 - j. "No Smoking" signs shall be posted. Additionally, the signage should be visible near any propane containers.
- (2) Requirements for Mobile Food Units using Electrical Service: All Mobile Food Units using electrical service shall abide by the following standards, requirements and restrictions:
- a. Extension cords shall not be utilized, nor are they a substitute for permanent wiring.
 - b. An appropriately sized power supply cord with corresponding connections will be allowed. The cord will be sized according to the vehicle's electrical demands.
 - c. Appliances shall be plugged directly into electrical outlets.
 - d. All electrical outlets within six feet of a wet location shall be ground fault circuit interrupter (GFCI) protected. All exterior outlets shall be GFCI protected.
 - e. Generators shall be mounted on or placed in approved locations on the Mobile Food Unit. Generators are not to be placed on the ground without prior authorization from AHJ.
- (3) Fire Extinguishers and Suppression System:
- a. Mobile Food Units which perform cooking operations that produce grease laden vapors shall be provided with a Type I hood with ventilation.
 - b. Type I hoods shall be protected by a UL 3200 or UL 300A fixed fire extinguishing system.
 - c. All fire suppression systems require a bi-annual system inspection by a Texas licensed fire suppression company.
 - d. All cooking surfaces and hoods are to be kept clean to prevent grease build-up.
 - e. All fire extinguishers require an annual inspection by a Texas licensed fire extinguisher company. Required extinguishers must be properly mounted and readily accessible.
 - f. At least one portable extinguisher of the 2A10BC rating shall be accessible to the interior of the Mobile Food Unit.
 - g. Mobile Food Units utilizing oil/grease fryers are required to have a Class K fire extinguisher on the unit.

- (4) Cooking Equipment and Appliances:
 - a. All cooking appliances shall be of an approved type. Listed and labeled for the intended use. Propane appliance can be approved by the following testing labs: UL, CSA, CGA, AGA and/ or ETL.
 - b. Cooking appliances shall have an approved, labeled and listed on-off valve.
 - c. All appliances shall be installed according to the manufacture's instruction.
 - d. Water heaters or hot water tanks shall be installed in accordance with the International Plumbing Code and manufacturer's installation instructions and shall include venting of the tank.
- (5) Fire Lanes/ Fire Access and Drive Ways:
 - a. Mobile Food Units shall not park in marked fire lanes, ADA parking, or loading zones and shall not block fire department access or drive ways that serve as access.
- (6) Prohibited Cooking:
 - a. Solid fuel cooking is prohibited with the exception: The cooking device is listed and approved for Mobile Food Unit cooking applications.
 - b. Coleman style stoves, hot plates or equivalents are prohibited.
- (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.
- (i) *Noise.* No noise which is loud or noxious shall project from the Mobile Food Unit.

Sec. 13A-8. Suspension of Permit.

- (a) The AHJ 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 or public safety. Suspension is effective upon service of the notice required by 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 twenty (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 City of Marshall's Community Development Department by the holder of the permit within ten (10) days. If no written request for a hearing is filled within ten (10) days, the suspension is sustained. The Regulatory Authority may end the suspension at any time if reasons for the suspension no longer exist.

Sec. 13A-9. 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 AHJ 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 (10) days following service of such notice unless a written request for a hearing is filed with the Community Development Department by the holder of the permit within such ten (10) day period.
- (b) If no request for a hearing is filed within the ten (10) day period, the revocation of the permit becomes final.

Sec. 13A-10. 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.

Sec. 13A-11. Penalties.

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 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 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 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 a 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 Council of the City of Marshall that all other terms and provisions of this ordinance not affected shall remain in full force and effect.

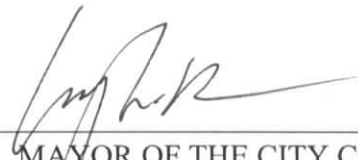
Section 6. The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Marshall, in compliance with the provisions of Article III Section 3.15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law. This ordinance shall become effective ten (10) days after first publication as described above.

PASSED, APPROVED AND ADOPTED ON THIS 13th DAY OF October, 2022.

AYES: 7

NAYES: 0

ABSTAINED: 0



MAYOR OF THE CITY COUNCIL
OF THE CITY OF MARSHALL, TEXAS

ATTEST:



Nikki Smith, City Secretary