

ORDINANCE NO. 2017-04

AN ORDINANCE AMENDING CHAPTER 58 OF THE CODE OF ORDINANCES OF THE CITY OF PORT NECHES, TEXAS, BY ADDING SECTIONS 58-70 THROUGH 58-76, GOVERNING THE OPERATION OF MOBILE CONCESSIONS IN THE CITY; ESTABLISHING A PERMIT AND REQUIRED FEE; AND ESTABLISHING A PENALTY

WHEREAS, the City Council of the City of Port Neches, Texas, deems it to be in the best interest of the citizens of said City to amend Chapter 58 of the Code of Ordinances of the City of Port Neches, Texas, by adding Sections 58-70 through 58-76.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT NECHES, TEXAS:

SECTION I. That Section 58-70 of the Code of Ordinances of the City of Port Neches is hereby added to read as follows:

SECTION 58-70. Definitions.

Concession means an enterprise which operates in the open and or utilizes a non-permanent structure and that makes available for sale perishable goods or commodities.

Concession truck/trailer/kiosk means a mobile concession establishment that is self-sufficient and readily moveable.

Kiosk means any cart, table, equipment or apparatus, which is designed and intended so as to not be a permanent fixture, and which is used for retail sales, rental, and/or display of perishable and/or non-perishable goods and/or commodities. This definition does not include any motorized or non-motorized vehicle such as a truck, trailer, mobile home, automobile, van or the like.

Mobile concession means a concession that moves from location to location providing their services.

Trailer means a portable vehicular structure built on a chassis, which may or may not be self-propelled being either a dependent or independent unit.

SECTION II. That Section 58-71 of the Code of Ordinances of the City of Port Neches is hereby added to read as follows:

SECTION 58-71. Permit required.

1. No person shall conduct a concession in the City without a permit.
2. A new permit shall be obtained each calendar year, from January 1 through December 31. The annual permit is valid from the date the permit is obtained and shall expire on December 31 of each year.
3. All permits shall be non-transferable to person and/or location, unless:
 - a) Request is in writing with supporting application materials; and
 - b) Request is received within sixty (60) days of original permit issuance.

SECTION III. That Section 58-72 of the Code of Ordinances of the City of Port Neches is hereby added to read as follows:

SECTION 58-72. Procedure for approval and applicable standards.

1. The application shall be submitted to the Building Official at least ten (10) business days prior to the first date the contemplated concession is to take place.
2. Application submittal requirements may include, but not be limited to, the following:
 - a) Completed written application;
 - b) Valid legal identification;
 - c) Proof of insurance and/or bond, in accordance with requirements established by the City;
 - d) Site plan (each location of a concession shall be considered a separate business, therefore a separate permit shall be required for each location);
 - e) Proposed signage;
 - f) A Jefferson County Health Department permit is required at the time of application. Any concession must adhere to all Jefferson County Health Department requirements;

- g) Copy of the current signed lease or approval from the property owner to utilize the property from which the concession is to be conducted;
- h) State sales tax identification number and the City shall be indicated as the origin of sales;
- i) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance (the City reserves the right to perform a criminal background check prior to the issuance of a permit); and
- j) Payment of a permit fee as established by the City Council;
 - (1) The annual permit fee, as established by the City Council, shall be five hundred dollars (\$500.00) per concession truck/trailer/kiosk;
 - (2) The permit is valid upon payment of the permit fee and inspection, with approval, by the Fire Department;

3. Location standards.

- a) Concession permits are valid in Business-Light, Business-Medium, Business-Downtown, Industrial-Light, and Industrial-Heavy zoning districts.
- b) Concessions cannot block fire hydrants, fire lanes, Fire Department connections, and entrances/exits for adjacent structures.

4. The following regulations shall apply:

- a) The proposed site of the concession may not include or be located within any required parking space(s) for a permanent business(es), unless written consent is granted by the property owner and the City's parking space requirements continue to be met.
- b) A concession may not be located in the public right-of-way, state highway department right-of-way or driveway and any serving window shall maintain a minimum setback of five feet (5') from the street right-of-way;
- c) Concessions shall move and vacate the premises of the business location on a daily basis; overnight parking is prohibited.
- d) For purposes of this Section, structures that are manufactured for a use other than mobile vending may not be used. Examples of acceptable vehicles include, but are not limited to, vehicle equipped with serving windows, merchandise

display equipment, kitchen preparation areas, and advertisement display section. Approved structures must adhere to the following:

- (1) No cracked windows;
 - (2) No visible rust or disrepair;
 - (3) No offensive images or language may be on the concession or signs;
 - (4) No emission of noxious gases, odors, and/or fumes;
- e) Shall not operate from a vehicle such as a passenger (pickup) truck, flatbed trailer, mobile home, automobile, or passenger van;
 - f) Maximum of twelve (12) person seating allowed.
 - g) The concession must be able to relocate within four (4) hours of an emergency declaration by the City;
 - h) The concession shall be maintained in a clean and sanitary manner and shall not allow the accumulation of stagnant water. The concession must be associated with a commissary for disposal of oil and grey water;
 - i) Food preparation must meet Jefferson County Health Department regulations;
 - j) Concessions must have a water source as approved by the Jefferson County Health Department and provide a free-standing pole or on-board generator for electrical service;
 - k) A maximum of two (2) signs shall be permitted at each concession. The cumulative square footage may not exceed the face of the structure. Flashing and/or intermittent lighting signs are prohibited. No signage may exist within the City right-of-way;
 - l) Off-site business advertising is limited to the advertisement of brick and mortar establishments owned by the concessionaire;
 - m) The concession shall not use noise, lighting, or windblown devices as a means of attracting attention to the business;
 - n) Shall not be permitted within one hundred feet (100') of an existing residential structure. Measurement shall be from the window of the concession to the primary door of the residential structure.

- o) Must display the permit in a conspicuous location on the concession truck/trailer/kiosk;
- p) Each concession must have a litter receptacle available, clearly marked and maintained for patron use. Emptying and disposal of litter receptacle is the responsibility of the concession;

5. Fire Safety Requirements

- a) Concessions shall be inspected by Fire Department personnel prior to operating in the City and, at a minimum, annually.
- b) Concessions shall not be located where they may interfere with any fire lane, Fire Department connections, fire hydrant, or entrance/exit access of any structure.
- c) Concession staff shall be trained on the use of fire extinguishers and exhaust hood extinguishment systems, propane safety procedures, and refueling procedures, as applicable.
- d) Concessions shall include one (1) 10-BC fire extinguisher (general use) and other such fire extinguishers, appropriate for the cooking situation, as required by the Fire Department. All fire extinguishers shall include current inspections tags and be in working order.
- e) Concessions electrical system and power cords shall be safe and in good working condition.
- f) Generators shall be located at least ten feet (10') away from buildings, structures, vehicles, or other combustibles.
- g) Fuels shall be properly stored in approved Underwriter's Laboratory approved containers, away from heat sources.
- h) Propane tanks shall be secured, stored upright, and be within hydrostatic test date.
- i) All means of ingress/egress shall be clear and free from hazards.

- 6. The Building Official, or designee, reserves the right to deny, suspend, and/or revoke a permit based on any, but not limited to the following:

- a) Dangerous concession truck/trailer/kiosk placement or other threat to public health, safety and/or welfare; and
- b) Non-compliance with permit conditions or City Code provisions.

7. Renewal.

A permit may be renewed on an annual basis. A permit is valid from January 1 through December 31 of each calendar year, regardless of the date of obtaining permit.

SECTION IV. That Section 58-73 of the Code of Ordinances of the City of Port Neches is hereby added to read as follows:

SECTION 58-73. Inspection authority.

The City, Jefferson County Health Department, and/or State agencies may inspect at any time to ensure compliance with applicable codes, regulations, and/or requirements.

SECTION V. That Section 58-74 of the Code of Ordinances of the City of Port Neches is hereby added to read as follows:

SECTION 58-74. Exceptions and exemptions.

1. With the exception of all applicable Jefferson County Health Department regulations and State regulations, the provisions of this Section shall not apply to occasional fund raising events by nonprofit organizations and/or groups;
2. With the exception of all applicable Jefferson County Health Department regulations, all applicable State regulations, City requirements in Section 58-72 (3) and 58-72 (4) and the Fire Safety requirements in Section 58-72 (5), the provisions of this Section shall not apply to events or public festivals sponsored by the City, the Port Neches Chamber of Commerce, RiverFest, or as approved by the City Council; to concession trucks/trailers/kiosks affiliated with a Port Neches brick and mortar business; or to concession trucks/trailers/kiosks located on the owner's property.

SECTION VI. That Section 58-75 of the Code of Ordinances of the City of Port Neches is hereby added to read as follows:

SECTION 58-75. Penalty.

1. A violation under this Section is a Class C misdemeanor offense punishable upon conviction by a fine not to exceed five hundred dollars (\$500.00) per offense. Each day shall constitute a separate offense.
2. Pursuant to State law and this Ordinance, the maximum penalty for offenses arising under such Code or Ordinance of the City governing fire safety, zoning, public health and sanitation, shall not exceed the sum of two thousand dollars (\$2,000.00).
3. If such maximum penalty provided for by this Ordinance or any such offense is greater than the maximum penalty provided for the same or a similar offense under the laws of the State, then the maximum penalty for violation as provided by State statute shall be the maximum penalty under this Code.
4. Penalties provided for are in addition to any other enforcement remedies that the City may have under City ordinances and State law.

SECTION VII. That Section 58-76 of the Code of Ordinances of the City of Port Neches is hereby added to read as follows:

SECTION 58-76. Appeal process.

Should the applicant be aggrieved by the decision of the City to deny a permit request, suspend a permit, or revoke a permit, a letter requesting an appeal hearing must be submitted to the Building Official within ten (10) business days of the City's decision. Subsequent to receipt, a hearing will be conducted by the City Manager or his designee within ten (10) business days after which a determination is made and provided to the assigned party within five (5) business days. The decision of the City Manager, or his designee, is final.

SECTION VIII: SEVERABILITY CLAUSE:

If any section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to a particular set of persons or circumstances, should for any reason be held to be invalid, such invalidity shall not affect the remaining portions of this Ordinance and, to such end, the various portions and provisions of this Ordinance are declared to be severable.

SECTION IX: EFFECTIVE DATE AND PUBLICATION:

This Ordinance shall become effective after its approval, adoption and publication pursuant to law.

PASSED AND APPROVED by the City Council of the City of Port Neches, Texas, at a regular meeting this, the 4th day of May, 2017.

THE CITY OF PORT NECHES, TEXAS

Glenn Johnson, Mayor

ATTEST:

Jamie Mendoza, City Secretary

APPROVED AS TO FORM:

Pete Steele, City Attorney