

ORDINANCE NO. 2015-02-006

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING SECTION 146-42 (TEMPORARY USES) OF THE ZONING REGULATIONS PERTAINING TO FOOD TRUCKS AND TEMPORARY FOOD SALES; ESTABLISHING PRESUMPTIONS; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF

WHEREAS, the City of McKinney adopted the Code of Ordinances for the protection of the public health and general welfare of the people of the City of McKinney; and

WHEREAS, the City Council and the Planning and Zoning Commission have recognized that certain provisions of the Code of Ordinances should be reviewed and updated; and

WHEREAS, amendments to these provisions have been proposed and the City Council and the Planning and Zoning Commission of the City of McKinney are of the opinion that these chapters should be amended.

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

Section 1. That the Code of Ordinances, City of McKinney, Texas, Section 146-42 of the Code of Ordinances, is hereby amended and shall read as follows:

“Sec. 146-42. Temporary uses.

The following temporary uses may be allowed under the conditions and for the time specified upon proper application and review by the chief building official:

- (1) A temporary building may be used as an office incidental to construction work if such building is located upon the same property as the site under construction, does not contain living quarters, and provides only for uses incidental to construction on the premises. Such buildings shall be removed within 30 days following final acceptance of the construction by the city.
- (2) A temporary facility or a permanent residential structure located on any platted lot in an approved residential subdivision may be used as a construction office, or as a sales office, or for display purposes. No more than one office and no more than four display facilities shall be allowed for any purposes for any subdivision. Such temporary use shall be allowed for a period of one year, with extensions upon application and approval of six months possible, provided construction remains continuous and no more than ten lots remain unsold in the subdivision. However, in no case shall more than four such extensions be granted.
- (3) Temporary uses of a religious or philanthropic nature by those organizations not normally conducting business for profit may be allowed for the period of their actual duration up to a maximum of 30 days, except that two extensions of up to 30 days may be possible upon application and approval.
- (4) Temporary sales of seasonal products such as shaved ice or snow cones, firewood, cut trees, plants, fruits and vegetables, and the like may be allowed during their normal and generally accepted season for a period of up to 30 days, except that two extensions of up to 30 days may be possible upon application and approval. Temporary sales of seasonal products may be allowed no more than 120 days, whether consecutive or cumulative, per site.
- (5) Food Trucks. Food trucks shall be subject to the following criteria:

a. Definitions.

- i. *Food Truck* means an operational motor vehicle and/or trailer from which food and associated non-alcoholic beverages which are not typically tied to a single season of the year, are prepared, served and sold on private property for a period of time which exceeds 60 minutes or two instances of 30 minutes each day. This definition shall also apply to any seating, garbage and/or recycling containers, gear or equipment that is associated with the food truck's operation.
- ii. *Operation site* means the geographic area within which the food truck will park, prepare, and sell food and/or associated non-alcoholic beverages. This also includes areas where the food truck's customers go to consume food and/or non-alcoholic beverages sold from the food truck. The sale of merchandise other than food and non-alcoholic beverages shall not be permitted.

b. Permits and inspections required.

- i. *Food truck temporary site permit.* The owner or the authorized owner's representative of a property containing a site where a food truck will be located must apply for a temporary site permit from the Building Inspections Department prior to allowing a food truck to operate on their property. The permit application, which shall be verified in the same manner as required for a deed, shall include information that details where the food truck will be located on the property along with the location of any refuse receptacle(s), restroom(s), vehicle parking, dining area(s), and any other pertinent information regarding the operation of the food truck on the property. As part of the permit application, any necessary authorization letters from adjacent property owners and businesses shall be provided. Authorization letters that limit the allowance of food trucks to a specific type or style of food will not be accepted. Any additional information as may be deemed necessary by the Chief Building Official to thoroughly review the request shall also be submitted as part of the permit application. A food truck temporary site permit issued by the Building Inspections Department shall only remain valid for a maximum of six months and shall expire on June 30 or December 31 of every calendar year, whichever date occurs first following the issuance of such permit. A food truck temporary site permit may accommodate any licensed food truck vendor that the property owner/temporary site permit holder deems acceptable.
- ii. *Food truck vendor permit.* All food trucks shall be required to register and obtain all applicable permits from the Environmental Health Department prior to operation.
- iii. *Other permits.* Food trucks shall be responsible for identifying and obtaining all applicable permits and shall be responsible for conforming to all applicable city, county, state and federal regulations. Property owners shall be responsible for ensuring that any food truck which operates on their property obtains all necessary permits prior to operation and conforms to all applicable city, county, state and federal regulations.
- iv. *Inspections.* Food trucks and their operation sites (defined herein below) may be inspected from time to time by appropriate City personnel. Food trucks and operation sites shall immediately be made available for inspection upon request of such City personnel.

c. Property owner authorization. Owners of a property on which a food truck will operate shall provide written assurance to the Building Inspections Department that:

- i. Restrooms for each sex, or a gender neutral restroom(s), located within a permanent building that has been issued a valid certificate of occupancy shall be provided for the use of the food truck's customers, operators and employees. Such restroom(s) must remain open and available for use at all times during which the food truck is situated on the operation site. No portable or temporary restrooms shall be allowed; and
- ii. Refuse and/or recycling receptacles appropriately sized to accept refuse from the food truck operation and its customers shall be provided and remain available for use at all times during which the food truck is situated on the operation site. Such refuse and/or recycling receptacles shall be properly maintained and routinely emptied for the food truck operation.

d. Acceptable locations for food trucks ("operation sites").

- i. Subsequent to all permits being issued, food trucks may operate within any non-residential zoning district assuming all other locational criteria contained herein are also satisfied.
- ii. Food trucks and their customers shall be prohibited from utilizing the public rights-of-ways for food sales and/or consumption.
- iii. Food trucks shall only be permitted to sell food on private property, except as outlined in section 146-42(5)(j). Said property must feature an area of sufficient size that is finished with a concrete or asphaltic surface material on which the food truck may temporarily park (referred to as the operation site). No food truck shall be permitted on property that does not have a valid food truck temporary site permit.
- iv. All portions of a food truck and its associated operation site shall be located within 150 feet, as determined by the Fire Marshal, of a dedicated fire lane easement or a public street.
- v. Food trucks must be parked, situated and operated in a manner that does not restrict orderly and/or safe vehicular and/or pedestrian movements.
- vi. Food trucks may not occupy off-street parking or loading spaces that are otherwise required to satisfy minimum off-street parking or loading requirements of another land use which is also located on the same property as the food truck.
- vii. *Minimum distances*.
 - 1. No food truck operations including, but not limited to food preparation, sales or consumption shall be permitted within 300 feet of any door, window or outdoor dining area of any existing restaurant(s) or food service establishment(s). Food trucks shall be exempted from this requirement with the express written permission of the restaurants' or food service establishments' owner or authorized representative.
 - 2. Food trucks shall not be allowed to engage in sales operations within 1,000 feet of one another. Only one food

truck shall be permitted on each lot or property that is smaller than five acres in size.

3. Lots or properties that are five acres in size or larger may have two food trucks for every five acres of land area, which food trucks may be located within 1,000 feet of one another, with the maximum allowable number of food trucks on a particular lot or property being limited to no more than six food trucks.
 4. Food trucks shall not be allowed to engage in sales operations within 300 feet of any residential zoning district or any property used for residential purposes.
 5. Food trucks shall not engage in sales within 20 feet of a public right-of-way.
- e. Hours of operation. Food trucks shall only be allowed to engage in sales operations between the hours of 8:00 am and 10 pm. Food trucks shall not be located or stored at the operation site between the hours of 11 pm and 7 am.
 - f. Off-street vehicle parking. One off-street vehicle parking space shall be required for each table that is provided for use by food truck customers. If no tables are provided, no off-street vehicle parking shall be required.
 - g. Signage. All signage pertaining to or advertising a food truck and/or its menu shall be attached to the food truck. No other signage shall be allowed for the promotion or advertisement of a food truck or operation site. There shall be no limit to the amount of signage that is allowed on a food truck. Signage containing profanity or lewd or obscene images shall be prohibited.
 - h. Refuse, recycling, litter and food preparation byproducts.
 - i. Food truck operators shall provide, on or within 20 feet of the food truck, containers of sufficient size and number for the disposal of refuse and recyclables resulting from the food truck's operation and sales. The containers shall be identified as being for the disposal of refuse and/or recyclables.
 - ii. City-provided refuse and recycling containers shall not be used for the food truck's refuse and/or recycling needs unless written authorization has been provided by the City.
 - iii. Any refuse, recycling and/or litter on the ground at the operation site shall be immediately picked up and discarded appropriately by the food truck operator. Refuse and/or recycling must be removed from the operation site at least daily or more frequently as needed to remove excess refuse and/or recycling from the operation site.
 - iv. Greases, oils, vapors and other similar food preparation byproducts shall be kept inside the food truck at all times. Dumping, or the improper disposal, of food preparation byproducts into a storm water collection system or other system not designed for that specific use is strictly prohibited and may result in the immediate revocation of all permits and licenses in addition to any necessary remediation and the issuance of citations and fines.
 - v. Sewage, liquid wastes and food preparation byproducts shall be removed from a food truck at an approved waste servicing area in such a way that a public health hazard or nuisance is not created.

- i. **Safety.** The Chief Building Official, Fire Marshal and/or the Environmental Health Manager shall have the authority to require that additional safety measures be provided at an operational site to ensure the health, safety, and welfare of the general public. These additional safety measures may include, but are not limited to, limitations governing the provision of utilities (water, wastewater, electricity, gas, etc.) to the food truck, providing fire extinguisher(s), and adding limitations to the use of deep fat fryers or flat top grills in specific instances.
 - j. **Exceptions.** These regulations shall not apply to food trucks that operate:
 - i. At a special event that is properly licensed pursuant to a special event permit issued by the City, provided that the food truck is identified in the special event permit application as a participating concessionaire or caterer; or
 - ii. As a vendor at a properly permitted farmers' market for which the food truck has rented space from the farmers' market and/or its organizer(s); or
 - iii. On public property including, but not limited to a public park, public library, recreation or aquatics center, or performing art center at the request of and with the express written permission of the property owner.
- (6) The chief building official, in approving or denying such application shall consider the nature of the use; existing uses in surrounding areas; noise, dust, light, and traffic generated; health and sanitary conditions; and compliance with other regulations of this chapter. The chief building official shall have the right, upon finding that a hazard or nuisance shall exist by continuing such use, to revoke any temporary use at any time or to deny any extension. After which, such temporary use shall immediately cease and all temporary structures shall be removed within ten days of notification of such finding."

Section 2. If any section, subsection, paragraph, sentence, phrase or clause of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and to this end, the provisions of this Ordinance are declared to be severable.

Section 3. That this Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.

Section 4. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THIS 3RD DAY OF FEBRUARY, 2015.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney