

ORDINANCE NO. 25-06

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF SILSBEE, TEXAS, TO ADD CHAPTER 5 – FOOD ESTABLISHMENTS.

WHEREAS, the City Council of Silsbee, Texas (the “City Council”) seeks to promote the effective, efficient, and orderly governance within the City Limits and the Extraterritorial Jurisdiction (“ETJ”); and

WHEREAS, upon consideration of all the information presented, the City Council finds that permitting of mobile concessions within the City of Silsbee is in the best interest of the citizens; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation for the good government, peace, or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City Council finds that the restrictions and amendments imposed by this Ordinance are reasonable, necessary, and proper for good government of the City of Silsbee.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Silsbee, Texas:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. ENACTMENT

- a. The Code of Ordinances of the City of Silsbee, Texas is hereby amended as follows:

The attached CHAPTER 5 – FOOD ESTABLISHMENTS is added to the Code of Ordinances of the City of Silsbee, Texas.

- b. The initial permit fee for concessions is set to \$500.00 per truck/trailer/kiosk.

3. REPEALER

All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections, or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations, and policies in the City’s Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

6. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication.

7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this 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, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED on first reading this, the 2nd day of April 2025, by a vote of ____ (ayes) to ____ (nays) to ____ (abstentions) of the City Council of Silsbee, Texas.

PASSED AND APPROVED on second reading this, the ____ day of ward 202____, by a vote of ____ (ayes) to ____ (nays) to ____ (abstentions) of the City Council of Silsbee, Texas.

City of Silsbee, Texas

By: Danny Reneese
Mayor

ATTEST:

Debra [Signature]
City Secretary

APPROVED AS TO FORM ONLY:

[Signature]
City Attorney

Chapter 5 FOOD ESTABLISHMENTS

ARTICLE I. IN GENERAL

Secs. 5-1—5-18. Reserved.

ARTICLE II. INSPECTION PROGRAM SERVICES

Sec. 5-19. Designation of health authority.

The city designates the county health department director as its health authority for the purpose of ensuring minimum standards of environmental health and sanitation within the scope of that department's function.

Sec. 5-20. State regulations adopted.

(a) There is hereby adopted by reference the Texas Department of Health Services, Division of Food and Drugs, Rules on Food Service Sanitation and the Rules on Retail Food Store Sanitation, and the Texas Food, Drug and Cosmetic Act (V.T.C.A., Health and Safety Code ch. 431), the Texas Sanitation and Health Protection Law (V.T.C.A., Health and Safety Code ch. 341), and the Texas Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors (V.T.C.A., Health and Safety Code ch. 437).

(b) A certified copy of each rule manual in subsection (a) of this section shall be kept on file in the office of the city secretary/treasurer.

Sec. 5-21. Definitions.

All definitions in Rules on Food Service Sanitation and Rules on Retail Food Store Sanitation are hereby adopted. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Food establishment means all places where food or drink are manufactured, packaged, produced, processed, transported, stored, sold, commercially prepared or otherwise handled, whether offered for sale, given in exchange or given away for use as food or furnished for human consumption. The term does not apply to private homes where food is prepared or served for guest and individual family consumption. The location of commercially packaged single portion nonpotentially hazardous snack items and wrapped candy sold over the counter is excluded.

Health department means representatives of the county health department.

Ownership of business means the owner or operator of the business. Each new business owner or operator shall comply with the current Code of the city.

Regulatory authority means representatives of the county health department.

Service of notice means a notice provided for in these rules is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit.

Sec. 5-22. Food permits—Requirement.

It shall be unlawful for any person to operate a food establishment in the city, unless he possesses a current and valid health permit issued by the health department.

Sec. 5-23. Same—Posting.

A valid permit shall be posted in public view in a conspicuous place at the food establishment for which it is issued.

Sec. 5-24. Same—Nontransference; change of ownership.

Permits issued under the provisions of this article are not transferable. Upon change of ownership of a business, the new business owner will be required to meet current standards as defined in city ordinances and state law before a permit will be issued.

Sec. 5-25. Same—Multiple establishments at same or different locations.

A separate permit shall be required for every type food establishment, temporary food establishment and childcare facility whether situated in the same building or at a separate location. Lounge operations located in the same building on the same floor operating under the same liquor license will not require a separate permit.

Sec. 20-26. Suspension of permit.

The health department may suspend any permit to operate a food establishment if the operation of the establishment does not comply with the requirements of this article, state laws and rules, or the operation of the food establishment otherwise constitutes an imminent health hazard. Before a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within ten days of receipt of a written request for a hearing. Suspension is effective after a ten-day notice period is given by the health department in the event a public hearing is not requested. When a permit is suspended, food service operations shall immediately cease.

Sec. 20-27. Notification of right to hearing.

Whenever a notice of suspension is given, the holder of the permit or the person in charge shall be notified in writing that an opportunity for a hearing will be provided. If no written request for hearing is filed within ten days, the permit is suspended. The health department may end the suspension any time if reasons for suspension no longer exist.

Sec. 5-28. Revocation of permit.

The health department may, after providing notice and an opportunity for a hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules for interference with the health department in the performance of its duties. Prior to revocation, the health department shall notify the holder of the permit or the person in charge, 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 health department by the holder of the permit within such ten-day period, the revocation of the permit becomes final.

Sec. 5-29. Service of notice; copy filed.

A notice provided for in these rules is properly served when it is delivered to the holder of the permit, license or certificate, or the person in charge or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit, license or certificate. A copy of the notice shall be filed in the records of the regulatory authority.

Sec. 5-30. Hearing.

The hearings provided for in these rules shall be conducted by the regulatory authority at a time and place designated by it. Based upon the recorded evidence of such hearings, the regulatory authority shall make a final finding, 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, license or certificate by the regulatory authority.

Sec. 5-31. Right of appeal.

Any permit holder who wishes to dispute the decision of a hearing may appeal the decision to the director of the county health department.

Sec. 5-32. Food permits application after revocation.

Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit to the health department.

Sec. 5-33. Permit fee.

(a) A health permit fee as established by the commissioners' court in incorporated and unincorporated areas of the county is required annually for each food establishment. Fees are due and payable on or before February 1 and are to be paid to the Hardin County Health Department at P. O. Box 820, Kountze, Texas 77625.

(b) A health permit fee as established by the commissioners' court in incorporated and unincorporated areas of the county is required of any food establishment operating less than 14 days. Fees are due and payable as listed in item.

Sec. 5-34. Submission of plans.

(a) 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 health department for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The health department shall approve the plans and specifications if they meet the requirements of these rules. No food establishment shall be

constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the health department.

(b) The health department shall inspect any food establishment prior to its beginning operation to determine compliance with approved plans and specifications and with the requirements of these rules.

Sec. 5-35. Food manager certificate—Required, valid for three years..

(a) All food establishments, except establishments dealing only in fresh produce and/or prepackaged nonpotentially hazardous food, shall have a person employed in a managerial capacity possessing a current food manager's certificate issued by the health department. A certified manager or person in charge must be on duty during all hours of operation of any nonexempt food service establishment employing six or more employees.

(b) Upon written application and presentation of evidence of satisfactory completion of a food manager's course, equivalent training or examination as approved by the director of public health, the health department shall issue a food manager's certificate valid for three years from the date of training or evaluation unless sooner revoked. Suspension or revocation of an establishment's health permit by the health department shall constitute cause of revocation of that manager's certification.

(c) Whenever the food service operator holding the certificate terminates employment, is terminated or is transferred to another food establishment, the person owning, operating or managing the food establishment shall be allowed 60 days from the date of termination or transfer of the certificate holder to comply with this section.

Sec. 5-36. Same—Exemptions.

Temporary food establishments and persons participating as volunteer food handlers performing charitable activities for period of 14 days or less may be exempted from the requirement for manager's certificate.

Sec. 5-37 – 5-50. Reserved.

ARTICLE III. MOBILE CONCESSIONS AND MOBILE FOOD VENDORS

Sec. 5-51. 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.

Sec. 5-52. Permit required.

- (a) No person shall conduct a concession in the city without a permit.
- (b) 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.
- (c) All permits shall be non-transferable to person and/or location, unless:
 - (1) Request is in writing with supporting application materials; and
 - (2) Request is received within 60 days of original permit issuance.

Sec. 5-53. Procedure for approval and applicable standards.

- (a) The application shall be submitted to the building official at least ten business days prior to the first date the contemplated concession is to take place.
- (b) Application submittal requirements may include, but not be limited to, the following:
 - (1) Completed written application;

- (2) Valid legal identification of the applicant;
- (3) Proof of insurance and/or bond, in accordance with requirements established by the city;
- (4) Proposed signage;
- (5) A Hardin county health department permit is required at the time of application. Any concession must adhere to all county health department requirements;
- (6) State sales tax identification number and the city shall be indicated as the origin of sales;
- (7) 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
- (8) Payment of a permit fee as established by the city council;
 - a. The annual permit fee shall be per concession truck/trailer/kiosk;
 - b. The permit is valid upon payment of the permit fee and inspection, with approval, by the fire department;
 - c. The permit fee may be adjusted from time to time by resolution of the city council.
- (c) Location standards.
 - (1) Concession permits are valid in Business-Light, Business-Medium, Business-Downtown, Industrial-Light, and Industrial-Heavy zoning districts.
 - (2) Concessions cannot block fire hydrants, fire lanes, fire department connections, and entrances/exits for adjacent structures.
 - (3) Written permission of the landowner or a written lease is required for any concession located on property not owned by the permittee.
 - (4) No concessions may be located within city parks unless specifically authorized by the City Manager.
- (d) The following regulations shall apply:

- (1) 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.
- (2) 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 from the street right-of-way;
- (3) Concessions shall move and vacate the premises of the business location on a daily basis; overnight parking is prohibited.
- (4) 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:
 - a. No cracked windows;
 - b. No visible rust or disrepair;
 - c. No offensive images or language may be on the concession or signs;
 - d. No emission of noxious gases, odors, and/or fumes;
- (5) Shall not operate from a vehicle such as a passenger (pickup) truck, flatbed trailer, mobile home, automobile, or passenger van;
- (6) Maximum of 12 person seating allowed.
- (7) The concession must be able to relocate within four hours of an emergency declaration by the city;
- (8) 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;
- (9) Food preparation must meet the county health department regulations;
- (10) Concessions must have a water source as approved by the county health department and provide a free-standing pole or on-board generator for electrical service;

(11) A maximum of two 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;

(12) Off-site business advertising is limited to the advertisement of brick and mortar establishments owned by the concessionaire;

(13) The concession shall not use noise, lighting, or windblown devices as a means of attracting attention to the business;

(14) Shall not be permitted within 100 feet of an existing residential structure. Measurement shall be from the window of the concession to the primary door of the residential structure.

(15) Must display the permit in a conspicuous location on the concession truck/trailer/kiosk;

(16) 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;

(e) Fire safety requirements.

(1) Concessions shall be inspected by the fire marshal prior to operating in the city and, at a minimum, annually.

(2) 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.

(3) Concession staff shall be trained on the use of fire extinguishers and exhaust hood extinguishment systems, propane safety procedures, and refueling procedures, as applicable.

(4) Concessions shall include one 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.

(5) Concessions electrical system and power cords shall be safe and in good working condition.

- (6) Generators shall be located at least ten feet away from buildings, structures, vehicles, or other combustibles.
- (7) Fuels shall be properly stored in approved Underwriter's Laboratory approved containers, away from heat sources.
- (8) Propane tanks shall be secured, stored upright, and be within hydrostatic test date.
- (9) All means of ingress/egress shall be clear and free from hazards.
- (f) 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:
 - (1) Dangerous concession truck/trailer/kiosk placement or other threat to public health, safety and/or welfare; and
 - (2) Non-compliance with permit conditions or city Code provisions.
- (g) 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.

Sec. 5-54. Inspection authority.

The city, the county health department, and/or state agencies may inspect at any time to ensure compliance with applicable codes, regulations, and/or requirements.

Sec. 5-55. Exceptions and exemptions.

- (a) With the exception of all applicable 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;
- (b) With the exception of all applicable county health department regulations, all applicable state regulations, city requirements in section 5-53(c) and 5-53(d) and the Fire Safety requirements in Section 5-53(e), the provisions of this section shall not apply to events or public festivals sponsored by the city, the Silsbee Chamber of Commerce, or as approved by the city council; to concession trucks/trailers/kiosks affiliated with a city brick and mortar business; or to concession trucks/trailers/kiosks located on the owner's property.

Sec. 5-56. Penalty.

(a) A violation under this section is a Class C misdemeanor offense punishable upon conviction by a fine not to exceed \$500.00 per offense. Each day shall constitute a separate offense.

(b) Pursuant to state law and this article, 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 \$2,000.00.

(c) If such maximum penalty provided for by this article 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.

(d) Penalties provided for are in addition to any other enforcement remedies that the city may have under city ordinances and state law.

Sec. 5-57. 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 business days of the city's decision. Subsequent to receipt, a hearing will be conducted by the city manager or his designee within ten business days after which a determination is made and provided to the assigned party within five business days. The decision of the city manager, or his designee, is final.

Secs. 5-58—5-100. Reserved.