

ORDINANCE NO. O-2021-011

AN ORDINANCE AMENDING CHAPTER 8 - BUSINESS AND BUSINESS REGULATIONS TO PROVIDE REGULATIONS FOR MOBILE FOOD UNITS AND MOBILE FOOD COURTS; PROVIDING A CUMULATIVE & CONFLICTS CLAUSE, PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 122 of Texas Health and Safety Code empowers the City Council of the City of Shavano Park to enact regulations and adopt rules to promote the public health; and

WHEREAS, it is the intent of the City Council to ensure the Mobile Food Units and Mobile Food Courts provide food preparation and dining services that is in the interest of public health; and

WHEREAS, the City Council determines that this Ordinance will be in keeping with the spirit and intent of the Code of Ordinances of the City of Shavano Park, and will not adversely affect traffic, public health, public utilities, public safety, and the general welfare; and

WHEREAS, the City Council has determined that this ordinance is in the best interest of the general welfare of the City of Shavano Park by furthering the public health.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHAVANO PARK, TEXAS:

I

CODE AMENDMENT

Chapter 8, Article III. - - FOOD AND FOOD ESTABLISHMENTS of the City of Shavano Park Code of Ordinances is hereby amended to read as follows:

Sec. 8-41. - Adoption of Texas Food Establishment Rules.

The City of Shavano Park adopts by reference the provisions of the current rule or rules as amended by the Texas Board of Health found in 25 Texas Administrative Code, Chapter 229, and Sections 161 through 171 and Sections 173 through 175 regarding the regulation of food establishments in this jurisdiction.

Sec. 8-42. - Definitions.

The following definitions shall apply in the interpretation and the enforcement of this article:

Food establishment shall mean a food service establishment, a retail food store, a mobile food court, a mobile food unit, and/or a roadside food vendor and includes those selling pre-packaged food items.

Food and beverage handler shall mean any person, including any cook, cook's helper, waiter, waitress, dishwasher, bartender, barmaid, bus boy, or other person, whether or not the owner of the establishment in which the activity is performed employs or pays any compensation to such person to perform such activity, who engages in the delivery, storing, preparation or dispensing or serving of food or beverages, as defined herein, for pots, pans, grills, skillets, plates, trays, eating utensils, or similar wares in, on or with which such food or beverage is prepared, dispensed or served.

Health Inspector shall mean the City Health Inspector or his authorized representative.

Mobile food court.

A mobile food court is a parcel of land designated and permitted to offer food or beverages for sale to the public from two or more mobile food units. All mobile food courts require a permanent structure for restroom facilities located on the parcel of land.

A mobile food court shall not be interpreted to include a congregation of mobile food units as a secondary, accessory use, and temporary use on existing commercially developed land.

Mobile food unit. A "mobile food unit" is a self-contained unit, either motorized or in a trailer on wheels that is readily movable, without disassembling, for transport to another location, and that serves the purpose of preparing and/or serving food and beverages. The term "mobile food unit" shall not include individual non-motorized vending carts.

Permit shall be used to designate an annually renewed license to operate a food establishment issued by the City.

State Rules shall mean rules found in 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and Sections 173 through 175. These rules are also known as the Texas Food Establishment Rules.

Sec. 8-43. - Inspector.

- (a) Health Inspector function created. There is hereby created the function of Health Inspector in and for the City.
- (b) Appointment. The Health Inspector shall be selected by the City Manager followed by appointment by the City Council.

- (c) Term. The person appointed as Health Inspector shall serve in such office at the pleasure of the City Council.
- (d) Duties. The Health Inspector shall perform the duties required by the provisions of this Code, State law, and City Ordinances, rules and regulations.

Sec. 8-44. - Food manager certification required.

A food establishment shall employ at least one person assigned to each shift of 12 or fewer hours who:

- (1) **Meets** the "person in charge" definition found in the Texas Food Establishment Rules; and
- (2) **Has** a valid and current food manager's certificate issued by an accredited State of Texas Course. Certificates must be validated by the City.

The Health Inspector may require food and beverage handler certification if a food establishment has had its permit temporarily suspended for one or more health violations.

EXCEPTION: Volunteer and/or non-profit organizations that serve food on a temporary basis that will be in operation for less than five days.

Sec. 8-45. - Examination and condemnation of unwholesome or questionable food or drink.

- (a) **Samples** of food, drink and other substances shall be taken and examined by the Health Inspector as often as deemed necessary for the detection of unwholesomeness and deleterious qualities. The Health Inspector may condemn and forbid the sale of or cause to be removed or destroyed, any food or drink which is unwholesome or deleterious.
- (b) **Any** food which appears to the Health Inspector to be of a questionable nature from the standpoint of wholesomeness or possible deleterious quality may be held for further examination by attaching a "City of Shavano Park Retained" tag to the item(s). Food items which have been retained may not be removed or disturbed without the permission of the Health Inspector. The City Health Inspector shall promptly proceed by examination, laboratory or other wise to determine the wholesomeness of such food. As soon as such wholesomeness has been determined, such food must be immediately released. If however, such food is found to be unwholesome or deleterious, the Health Inspector must promptly condemn such food as herein stated and shall file a petition in a court of competent jurisdiction for injunction to restrain the owner from selling such condemned food and to obtain order for destruction of such unwholesomeness or deleterious food or drink.

Sec. 8-46. - Inspection of food establishments and mobile food units.

- (a) As often as deemed necessary for the proper enforcement of the provisions of this article, the Health Inspector, shall inspect every food establishment, and temporary food establishment, as defined by this article that is located within the City. See special provisions for mobile food units in subsection (d) of this section. In case of violations of any items of sanitation brought to the attention of the Health Inspector, he shall so advise the person in charge of the food establishment and shall make a second inspection after a lapse of such time as deemed sufficient for the violation to be corrected and the second inspection shall be used in determining compliance with the requirements of this article. Any violation of suspension of the permit by the Health Inspector.
- (b) In the interest of public clarification, the results from compiling the inspection report will be converted to a letter grade with the letter "A" being the highest level of food service operation. The criteria for the various certificates are:
 - (1) Grade "A"—Attain a sanitation score of 85 or above.
 - (2) Grade "B"—Attain a sanitation score between 70 and 84.
 - (3) Grade "C"—Below 70 on the sanitation inspection.
- (c) An inspection certificate shall be issued and a copy shall be posted by the Health Inspector at some conspicuous location on the premises where it will be clearly visible to all patrons. The certificate shall not be defaced or removed by any person except the Health Inspector.
- (d) All mobile food units shall comply with the following regulations:
 - (1) All Mobile food units shall be registered, inspected, and permitted by the City of San Antonio Health Department, Bexar County Environmental Services Department or pass a City of Shavano Park Health Inspection. Health Safety permits from San Antonio, Bexar County and/or Shavano Park must be clearly posted to the public. If a mobile food unit is without an existing Health Safety permit as described above, the mobile food unit operator must follow the inspection standards of this section.
 - (2) All mobile food units where cooking or heating is conducted in the unit or a generator is used in association with the unit require a fire safety inspection from the City of Shavano Park Fire Marshal.

- (e) Violation of this section shall be a Class C misdemeanor punishable by a fine not to exceed \$200.00 per day that the certificate is removed, moved or defaced and/or suspension of the food establishment permit for 30 days. The Health Inspector shall permit the owner to correct any non-critical infractions within no more than 24 hours or less. If the Health Inspector determines that the infraction is of an immediate threat to the public health, there shall be no grace period for correction. Repeat violations may result in higher point deduction.

Sec. 8-47. Mobile food unit regulations

All mobile food units shall comply with the following regulations:

- (a) A Congregation of mobile food units for longer than 12 hours on more than two consecutive days is prohibited. In addition, mobile food units in a temporary congregation shall not be stored overnight onsite or be taken off their wheels. The property owner must make permanent restroom facilities available to persons who purchase food or beverages from the food trucks in a temporary congregation.
- (b) All setback requirements in the underlying zoning district shall be adhered to. No mobile food unit, nor any associated seating areas, shall be located in a required zoning setback, buffer yard, access easement, drainage easement, floodplain, driveway, utility easement and/or fire lane(s).
- (c) There shall be at least ten feet of clearance between all individual mobile food units and at least ten feet of clearance from any mobile food unit to any structure.
- (d) Each mobile food unit and associated parking shall be located on an all-weather surface pad as approved by the building official.
- (e) The placement of the mobile food unit shall not impede traffic nor visually impair any motor vehicle operation within a parking lot, driveway or street.
- (f) Mobile food units shall provide at least 15 feet of clearance from any Fire Department connection or any fire hydrant.
- (g) All mobile food units and related activities must be located in compliance with the City's adopted fire code standards regarding the storage or dispensing of flammable combustible liquid or gas.
- (h) All food and beverage preparation shall take place within the mobile food unit.

Sec. 8-48. Mobile food courts prohibited

Mobile food courts, as defined by City Ordinance under Sec. 8-42, are prohibited.

Sec. 8-49. - Permits.

It shall be unlawful for any person to operate a food establishment or temporary food establishment in the City who does not possess a valid permit from the Health Inspector. Such permit shall be posted in a conspicuous place. Such permits are valid for one year and shall not be transferable. All permits expire in October of each year. All permits must be renewed within 30 days after expiration or they will be suspended. See Sec. 8-46(d) for mobile food unit permit and inspection requirements.

Sec. 8-50. - Fees.

- (a) The annual permit fee and reinstatement after revocation fee to cover the City of Shavano Park's cost incurred in conjunction with the inspection of food establishments located within the City shall be paid prior to issuance of such permit. Fees shall be established as follows:

Number of Employees	Fee
1—3	\$100.00
4—6	\$200.00
7—10	\$300.00
11—20	\$400.00
21+	\$500.00
Temporary establishments, per event	\$50.00

- (b) If at any time during the period of validity of any such permit additional persons are employed by an establishment, it shall be the duty of the person in charge to immediately notify the City of Shavano Park and if such an increase in personnel brings the establishment into a higher permit fee bracket, they shall pay the City the additional sum required. This charge and the charge for new establishments that start during the year will be prorated based on a 12-month calendar and divided based on the months remaining during the year.
- (c) Any mobile food units registered, inspected, and permitted by the City of San Antonio Health Department, Bexar County Environmental Services Department shall not be subject to any fees in this subsection.

Sec. 8-51. - Sanitation requirements.

(a) Food establishments generally.

- (1) All food establishments shall comply with all of the sanitation provisions set out in 25 Texas Administrative Code, Chapter 228 and Chapter 229.
- (2) **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 conversions shall be submitted to the City for review before work is begun. Extensive remodeling means that 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 arrangements, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The City of Shavano Park will approve the plans and specifications if they meet the requirements of the rules contained in this article as well as the City of Shavano Park Code of Ordinances. Prior to opening for business, each new remodeled establishment will be inspected by the Health Inspector to ensure compliance with this article.

(b) Disease control. No person who is infected with any disease in a communicable form or is a carrier of such a disease shall work in any food establishment or temporary food establishment. All provisions of 25 Texas Administrative Code, Chapter 228 and Chapter 229 shall be followed.

(c) Temporary food establishments. Temporary food establishments shall be constructed and operated in an approved manner. The Health Inspector shall approve a temporary food establishment only if it complies with the provisions of 25 Texas Administrative Code, Chapter 228.

Sec. 8-52. - Misdemeanor.

It shall be unlawful and constitute a misdemeanor for anyone to alter, deface, erase, obstruct or remove any card or notice posted by the regulatory authority or its authorized agent, for the purpose of enforcing this article or any of the food and sanitary laws and rules of the State of Texas or other applicable ordinances and regulations of the regulatory authority.

Sec. 8-53. - Violation; penalty.

(a) Any person who violates any provisions of the State Rules and of this article shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine not exceeding \$2,000.00 and each and every day that the State Rules or the provisions of this article are violated shall constitute a separate and distinct offense.

(b) As an additional remedy, the regulatory authority may seek any injunctive relief to which it may be entitled in law or in equity to enforce any of the provisions of this article.

Secs. 8-54—8-99. - Reserved.

**VIII
CUMULATIVE CLAUSE**

That this ordinance shall be cumulative of all provisions of the City of Shavano Park, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinance, in which event the conflicting provisions of such Ordinance are hereby repealed.

**IX
SEVERABILITY**

That it is hereby declared to be the intention of the City Council of the City of Shavano Park that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrases, clause, sentence, paragraph or section.

**X
PROPER NOTICE AND MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was adopted 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

**XI
EFFECTIVE DATE**

This ordinance shall be effective upon passage and publication as required by State and Local law.

PASSED AND APPROVED on the first reading by the City Council of the City of Shavano Park this the 26th day of January, 2022.

PASSED AND APPROVED on the second reading by the City Council of the City of Shavano Park this the 28th day of February, 2022.

ROBERT WERNER, MAYOR

Attest:

TRISH NICHOLS, CITY SECRETARY