

ORDINANCE NO. 23-13

AN ORDINANCE OF THE CITY OF SOUTH PADRE ISLAND, TEXAS, ENACTING A NEW CHAPTER 10, ARTICLE II, SECTIONS 10-10 THROUGH 10-37, WITH EXHIBITS A AND B RELATED TO FOOD SERVICES AND MOBILE FOOD UNITS; AND REPEALING CURRENT SECTIONS 10-10 THROUGH 10-33; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR A PENALTY OF TWO THOUSAND DOLLARS (\$2,000.00) FOR ANY VIOLATION; PROVIDING FOR SEVERABILITY; AND AUTHORIZING THE PUBLICATION IN CAPTION FORM.

WHEREAS, tourist from all over the world visit the City of South Padre Island;

WHEREAS, in 2017, the City of South Padre Island adopted Ordinance No. 17-04, Article II of Chapter 10 of the Code of Ordinances (Health and Sanitation) to provide for regulations pertaining to public health sanitation;

WHEREAS, the City Council finds that it is in the public interest to amend the City Code to adopt by reference the Texas Food Establishment Rules; and

WHEREAS, the City Council wishes to establish more clarity by adopting the Texas State Food Establishment Rules and Regulations relating to Food Services and Mobile Food Units in order to protect the public's health, safety, and welfare in the community, and to maintain consistency with the State Law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH PADRE ISLAND, TEXAS:

ARTICLE II. FOOD SERVICES

Sec. 10-10. Adoption of Texas food establishment rules

The definitions, ~~regarding the regulation of food establishments and food service establishments the inspection of food service establishments, the issuance, suspension and revocation of permits to operate food service establishments, the prohibiting of the sale of unsound or mislabeled food or drink,~~ and all other rules and regulations regarding health and sanitation and food establishments shall be governed, ~~and the enforcement of this ordinance shall be regulated and governed in accordance with the adoption by reference the provisions of the current rules or~~ rules as amended by The Executive Commissioner of the Health and Human Services Commission found in Title 25, Texas Administrative Code, Chapter 228, Subchapters A - J, as amended, ~~which is hereby incorporated and made a part of this ordinance by this reference, and the Texas Food Establishment Rules which are also incorporated and attached to this ordinance as Exhibit "B" and made a part hereof by this reference. regarding the regulation of food establishments in The City of South Padre Island.~~ Provided that "regulatory authority" shall be understood to refer to the

City of South Padre Island and its duly designated officials(s) who may be carrying out the duties provided for herein.

Sec. 10-10.1 Conflict

In the event there is a conflict between the provisions of the codes adopted by reference above in section 10-10 and other provisions of this Code or ordinances of the city, the other provisions of the City Code or ordinances shall prevail, EXCEPT that the specific provisions, rules, and regulations contained in Sec. 10-31 through Sec. 10-37 regarding MFU's, and the incorporated provisions in Sec. 10-31 through 10-37 shall always prevail and control in the regulation of MFU's.

Sec. 10-10.2

Any reference to "regulatory authority in this Article II and the incorporated state laws and rules shall mean the City of south Padre Island through its authorized representative to enforce the provisions of this Article. For the purposes of this Article the "authorized representative" shall be the Environmental Health Director of the City Manager or his designee.

(Ord. No 23-13)

Sec. 10-11. Definitions.

Except as provided below, the definitions outlined in the Texas Administrative Code Title 25, Part 1, Chapter 228 (Texas Food Establishment Rules) shall apply.

Authorized ~~agent or employee~~ representative means the Environmental Health Director, the City Manager or his designee. ~~employees of the regulatory authority.~~

Food establishment means a food service establishment, a retail food store, a temporary food establishment, a mobile food unit, and/or a roadside food vendor.

Food service establishment shall mean any place where food is prepared and intended for individual portion service or any site at which individual portions of food are provided, including any retail food store, bars, night clubs, saloon, cantinas, taverns, pubs, bakeries, schools, day cares, hotels, motels and places serving continental breakfast, a catering establishment, commissary, ~~a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority,~~ delicatessen-type operation that prepares sandwiches intended for individual portions, group residence, bed and breakfast, or any operation that is conducted from a mobile food unit. The term ~~applied~~ **applies** regardless of whether there is a charge for the food. The term does not include private homes where food is prepared or served for individual family consumption, the location of food vending machines, supply vehicles, ~~and a produce stand that offers only whole, uncut fresh fruits and vegetables.~~

The Municipality of the City of South Padre Island in this ordinance shall be understood to refer to the City of South Padre Island.

Outfitter operation means any operation such as trail rides, bus tours, bay and harbor cruises in which food is offered to patrons and which operates out of a central preparation location or food establishment.

Regulatory authority means the City of South Padre Island. ~~(Environmental Health Director~~).

State rules mean the state rules found at 25 Texas Administrative Code, Chapter 228. These rules are also known as the Texas Food Establishment Rules, and the rules for Mobile food Units which is mentioned in section 10-31(A) and incorporated by reference into this Article II of the City code and attached as Exhibit “A”.

Temporary food service shall mean any food-service establishment that operates at a fixed location with a single event or celebration. Each physically separated stand or booth shall constitute a temporary food service establishment that requires a separate permit under this article. Provided, however, in any instance in which all operations within a stand or booth are not under the supervision and control of the same person, then a separate permit shall be required for each person who controls any portion of the activities within the stand or booth. For the purpose of this definition, an 'event' or 'celebration' shall mean a gathering of persons at a festival, bazaar, carnival, circus, public exhibition or sporting event.

The rules and regulations governing Temporary Food Establishments are outlined in Rule 228.222 of Chapter 228 of the Texas Administrative Code, Title 25 and are adopted and incorporated herein by this reference.

Sec. 10-11.1 Bed and Breakfast Rules

The rules and regulations governing Bed and Breakfast establishments are outlined in Rule 228.223 of Chapter 228, Title 25 of the Texas Administrative Code and are adopted and incorporated herein by this reference and all Bed and Breakfast establishments must comply with the rules set out therein.

Sec. 10-11.2 Outfitter Operation Rules

The rules and regulations governing Outfitter Operations are outlined in rule 228.224, title 25 of the Texas Administrative code and are adopted and incorporated herein by this reference and all Outfitter Operations must comply with the rules set out therein.

(Ord. No 23-13)

Sec. 10-12. Permits and exemptions.

- (A) A person or entity may not operate a food establishment without a permit issued by the regulatory authority. Only a person or entity who complies with all requirements of this article shall be entitled to receive or retain a permit and a permit shall not be issued until the building, if any, in which the food establishment is to be located has been issued a certificate of occupancy by the city. Permits are not transferable from one person or entity to another or from one location to another location, except as otherwise permitted by this ordinance. A valid permit must be posted in or on every food establishment regulated by this ordinance.
- (B) A food establishment operated solely by a nonprofit organization is exempt from the permitting requirements of this ordinance, but is not exempt from compliance with state rules, and all other requirements and rules of this article. The regulatory authority may require any information necessary to determine whether an organization is nonprofit for purposes of this exemption.

- (C) Temporary food establishment permit shall be in effect for a period not exceeding seven (7) consecutive days in conjunction with a single event or celebration.

(Ord. No 23-13)

Sec. 10-12.1. Certified food managers required.

It shall be unlawful for any owner or operator of a ~~permanent~~ food establishment or food processing plant, during all hours of operation, to fail to have at least one person on the premises in charge of the operation that has a valid food protection manager's certification. This requirement shall not apply to retail food stores where only pre-packaged foods are sold, food vending machines, temporary food establishment(s) or religious/charitable organizations **such as** bake sales. Day Cares are exempt from this requirement.

(Ord. No 23-13)

Sec. 10-12.2. ~~Issuance.~~ Certified Food Managers Certification

Certified Food Manager's Certification must be obtained by passing a certified food managers examination approved by the Texas Department of State Health Services.

(Ord. No 23-13)

Sec. 10-12.3. Required training.

It shall be unlawful for any employees of a ~~permanent~~ food establishment to begin work without first having completed a minimum of two (2) hours of food sanitation training as approved by the local **Environmental** Health Director. Two (2) hours of re-training shall be required every two (2) years to ensure employees performance of their duties in accordance with food service sanitation ordinance, rules and regulations.

(Ord. No 23-13)

Sec. 10-12.4. Posting.

Posting: Each food protection manager certification shall be at all times kept posted in a location inside the food establishment that is conspicuous to consumers and each food handler's certification shall be kept posted, filed or otherwise readily available for viewing by the City's health authority or designated representative. Furthermore, the permit holder is required to post inspection report or notify customers that a copy of the most recent establishment inspection report is available upon request by posting a sign or placard in a location in the food establishment that is conspicuous to customers or by another method acceptable to the regulatory authority.

(Ord. No 23-13)

Sec. 10-13. Issuance of permit, license, or certificate.

- (A) Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the regulatory authority. **It shall be unlawful for any person or entity to operate a food establishment within the city limits of the City of South Padre Island without having been issued a valid health permit.** The application must contain the name and address of each applicant, the location and type of the proposed food establishment, the

applicable fee, and the signature of each applicant. 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 of permits are required on an annual basis and the same information is required for a renewal permit as for an initial permit. **An application for a temporary food establishment shall include the inclusive dates of the proposed operation and the location of the event.**

- (B) Prior to approval of an application for a permit, license, or certificate the regulatory authority shall inspect the proposed food service establishment to determine compliance with state laws and rules. A food establishment that does not comply with state laws and rules will be denied a permit or the renewal of a permit.
- (C) The regulatory authority shall issue a permit, license, or certificate to the applicant if its inspection reveals that the proposed food service establishment complies with the requirements of these rules, which license shall expire one year from its date, or upon transfer of ownership or change in management. A **nonrefundable permit** fee set out in the fee schedule ~~\$100.00~~ **see section 2-75** shall be charged for each permit.
- (D) The following fee schedule, which the City Council may change by resolution, applies to permits issued under this ordinance:

- Permanent Permit Fees are as follows:

Permanent Establishment Permit See Section 2-75

Permanent Establishment Re-inspections See Section 2-75

- Temporary Permit Fees are as follows:

Temporary Permit, (City Sponsored Events and nonprofit) See Section 2-75

Temporary Permit, (One function, up to three consecutive days) See Section 2-75

Temporary Permit, (Can be used up to six times within calendar year) See Section 2-75

Temporary Permit, (Can be used unlimited times within a calendar year) See Section 2-75

Sec. 10-13.1. Review 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 regulatory authority for review **and approval before construction, remodeling or conversion is commenced. before work is begun.** Extensive remodeling means that 20% or greater of the area of the food establishment is to be remodeled. The plans and specifications shall **indicate include a proposed menu,** proposed layout, equipment arrangement, mechanical plans, and construction ~~of~~ materials of work areas, and the type and model of proposed fixed equipment and facilities. ~~The plans and specifications must be approved by the regulatory authority if they meet the requirements of the rules adopted by this ordinance.~~ The approved plans and specifications must be followed in construction, remodeling, or conversion, **unless modifications are approved in writing by the regulatory authority. No food establishment shall be constructed, extensively remodeled, or converted except in accordance with the approved plans and specifications.**
- (B) Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.

Sec. 10-14. Suspension of permit, license, or certificate.

- (A) The regulatory authority, **through and by the Environmental Health Director, the City Manager, or his designee**, may, without **prior** notice, warning, or hearing suspend any permit, license, or certificate to operate a food service establishment if the holder of the permit, license, or certificate, **or operator of the food establishment**, does not comply with rules, regulations or requirements contained in Article II and Sections 10-10 through 10-28 , **and all adopted and incorporated state rules, laws, and regulations**, or if the operation of the establishment does not comply with the rules, regulations and requirements contained in Article II Sections 10-10 through 10-28, **and all adopted and incorporated state rules, laws and regulations**, or if the operation of the food service establishment otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by Paragraph (B) of this section. When a permit, license, or certificate is suspended, food service operations shall immediately cease. Whenever a permit, license, or certificate is suspended, the holder of the permit, license or certificate shall be afforded an opportunity for a hearing within 20 days of receipt of a request for a hearing.
- (B) Whenever a permit, license, or certificate is suspended, the holder of the permit, license, or certificate, or the person in charge shall be notified in writing that the permit, license, or **certificate is, upon service of the notice, immediately suspended and that an opportunity** for a hearing **before the Environmental Health director** will be provided if a written request for a hearing is filed with the regulatory authority by the holder of the permit, license, or certificate within ten (10) days **of the notice of suspension**. If no written request for hearing is filed **and received by the city** within **ten** (10) days, the suspension is sustained. The regulatory authority may **end-terminate** the suspension at any time if reasons for suspension no longer exist.
- (C) Whenever a business closes for remodeling, an inspection by the regulatory authority is necessary before re-opening.

(Ord. No 23-13)

Sec. 10-15. Revocation of permit, license, or certificate.

The regulatory authority **by and through the Environmental Health Director, the City Manager, or his designee**, may, after providing opportunity for a hearing, revoke a permit, license, or certificate for serious or repeated violations of any of the rules, regulations and requirements contained in Article II, Sections 10-10 through 10-28, and **all the adopted and incorporated state rules, laws, and regulations**, or for interference with the regulatory authority in the performance of its duties. Prior to revocation, the regulatory authority shall notify the holder of the permit, license, or certificate, or the person in charge, in writing of the reason for which the permit, license, or certificate is subject to revocation and that the permit, license, or certificate 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 regulatory authority by the holder of the permit, license, or certificate within such ten (10) days' period. If no request for hearing is filed within the ten days' (10) period, the revocation of the permit, license, or certificate becomes final.

(Ord. No 23-13)

Sec. 10-16. Service of notices.

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.

(Ord. No 23-13)

Sec. 10-17. Hearings.

The hearings provided for in these rules shall be conducted by and before the Environmental Health Director at a time and place designated by the City. **The Environmental Health Director may request the assistance of the City Attorney to represent the city at the hearing. Evidence may be presented by both sides and both sides will have the opportunity to question witnesses.** Based upon the evidence **presented** at the hearing, the Environmental Health Director shall make **findings of fact**, and shall **sustain, affirm**, modify, or rescind **the suspension or revocation of a permit, license, or certificate**. A written report of the hearing **outlining the findings of fact and the decision** by the Environmental Health Director shall be furnished to the holder of the permit, license, or certificate **within ten (10) days after the hearing**.

(Ord. No 23-13)

Sec. 10-18. Reserved.

Sec. 10-19. Application after revocation.

Whenever a revocation of a permit, license, or certificate is final, the holder of the revoked permit, license, or certificate may make written application for a new permit, license, or certificate.

(Ord. No 23-13)

Sec. 10-20. Inspection frequency.

An inspection of a food service establishment or food establishment **shall be performed prior to the issuance of a permit and** may be performed **thereafter** at least once every six months. Additional inspections of the food service establishment or food establishments may be performed as often as are necessary for the enforcement of these rules, **at the sole discretion of the Environmental Health Director**.

(Ord. No 23-13)

Sec. 10-21. Access.

Agents of the regulatory authority, after proper identification, shall be permitted to enter any food service establishment or food establishment at any reasonable time, for the purpose of making inspections to determine compliance with these rules. The agents shall be permitted to examine the records of the establishments to obtain information pertaining to food and supplies

purchased, received, or used, or to persons employed. ~~Failure to allow access to agents of the regulatory authority shall be cause for suspension or revocation of all and any permits held by the food service establishment or food establishment.~~ (Ord. No 23-13)

Sec. 10-22. Report on inspections.

Whenever an inspection of a food service establishment, ~~or food establishment or commissary~~ is made, the findings shall be recorded on an inspection report form. The inspection report form shall summarize the requirements of these rules and shall set forth a weighted point value for each requirement. Inspection remarks shall be written to reference, by section number, the section violated and shall state the correction to be made. The rating score of the establishment shall be the total of the weighted point values for all violations, subtracted from 100. A copy of the inspection report form shall be furnished to the person in charge of the establishment at the conclusion of the inspection. The completed inspection report form is a public disclosure to any person who requests it according to law.

(Ord. No 23-13)

Sec. 10-23. Correction of violations.

- (A) The inspection report form shall specify a reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:
- (1) If an imminent health hazard exists, such as a lack of refrigeration or sewage backup, into the establishment, ~~or other imminent public health or safety hazard, as determined solely by the Environmental Health Director,~~ the establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by the regulatory authority ~~and after full compliance is achieved and confirmed by the regulatory authority.~~
 - (2) All 1-point weighted items shall be corrected within ~~90~~ 10 days or until the next inspection, whichever comes first.
 - (3) All violations of 2-point weighted items shall be corrected as soon as possible, but in any event, within ~~ten (10)~~ five (5) days following inspection. The holder of the permit, license, or certificate shall submit a written report to the regulatory authority stating that the 2-point violations have been corrected.
 - (4) All 3-point weighted items require immediate corrective action not to exceed ~~3 days~~ 48 hours. One or more reinspection's may be conducted ~~at any time at reasonable time-intervals~~ to ensure correction.
 - (5) When the rating score of the establishment is less than 70, the establishment shall immediately cease doing business or serving the public-and may not re-open without approval of the ~~Environmental Health Director.~~
 - (6) In the case of temporary food service establishments, all violations shall be corrected immediately. If violations are not corrected, the establishment shall immediately cease food service operations until authorized to resume by the ~~regulatory authority~~ Environmental Health Director or his designee.

- (B) The inspection report shall state that failure to comply with any time limits for corrections may result in cessation of food service operations. An opportunity for appeal from the inspection findings and time limitations will be provided if a written request for a hearing is filed with the regulatory authority within ten (10) days following cessation of operations. If a request for a hearing is received, a hearing shall be held within 20 days of receipt of that request.
- (C) Whenever a food service establishment is required under the provisions of this rule to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.

(Ord. No 23-13)

Sec. 10-24. Inspection report form.

An inspection report form based on the requirements of these rules shall be available at all times.

(Ord. No 23-13)

Sec. 10-25. Examination and Hold Orders for Contaminated Food

- (A) The regulatory authority may, upon written notice to the owner or person in charge specifying with particularity the reasons therefor, place a hold order on any food which it believes is in violation of 228.255 of the Texas Food Establishment Rules or any other provisions of said rules, **or other state law, rules, or regulations**. The regulatory authority shall permit storage of the food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished. **No food subject to a hold order shall be used, served, or moved from the establishment without written consent of the Environmental Health Director.**
- (B) The hold order shall state that a request for hearing may be filed within three (3) days **with the Environmental Health Director**, and that if no hearing is requested **in writing**, the food shall be destroyed **at the expense of the owner or person in charge of the food service establishment or the food establishment**. A hearing shall be held if requested, and on the basis of evidence produced at that hearing, the hold order may be vacated, or the owner or person in charge of the food **subject to the hold order** may **be directed by written order to denature or destroy such food at their expense in a manner approved by the Environmental Health Director**, or to bring it into compliance with the provisions of the rules.

(Ord. No 23-13)

Sec. 10-26. Reserved

Sec. 10-27. Pre-operations inspection.

Whenever plans and specifications are required to be submitted to the regulatory authority, ~~or before the issuance of a permit is allowed, the regulatory authority~~ Environmental Health Director shall inspect the food service establishment or food establishment prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of these rules, ~~and all state rules, laws, and regulations adopted and incorporated as part of the City Code.~~

(Ord. No 23-13)

Sec. 10-28. Procedure when infection is suspected.

When the regulatory authority has reasonable cause to suspect the possibility of disease transmission from any food service establishment employee, it may secure morbidity history of ~~the suspected employee or make any other investigation as may be indicated and shall take~~ appropriate action. The regulatory authority may require any or all of the following measures:

- (A) The immediate exclusion of the employee from all food service establishments.
- (B) The immediate closing of the food service establishment concerned until, in the opinion of the regulatory authority, no further danger of disease outbreak exists.
- (C) The restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease.
- (D) The adequate medical and laboratory examination of the employee, of other employees and of his and their body discharges.

(Ord. No 23-13)

Sec. 10-29. Penalties.

Any person ~~or entity~~ who violates any provision of Article II, Sections 10-10 through 10-35, including the State rules, laws, and regulations adopted and incorporated into Article II, or who is a permit holder, a food service establishment operator, food establishment operator or any responsible employee, shall be fined ~~in accordance with Section 10-37.~~

(Ord. No 23-13)

Sec. 10-30. Injunctions.

~~In addition to the fine that may be assessed in accordance with Section 10-36, the City may enforce the provisions of Article II, Sections 10-10 through 10-35, including the rules for MFU's by suit for injunction.~~

(Ord. No 23-13)

Sec. 10-31. Mobile food units.

A) Adoption of State Rules

The Texas Food Establishment Rules (TFER) adopted by the Texas Department of State Health Services, and Title 25, Chapter 228 of the Texas Administrative Code in its entirety, except as amended herein, are hereby adopted as the City of South Padre Island Rules for Food Service Sanitation, and for the regulation of food services, including the Rules for Mobile Food Units (MFU), a copy of which is attached as Exhibit “A” to this adoptive ordinance and hereby incorporated as part of the City Code. The Texas food Establishment rules along with the Rules for Mobile food Units shall be maintained and filed together with the adoptive ordinance in the office of the Environmental Health Director.

The enforcement of this chapter of the Texas City Codes shall be regulated and enforced in accordance with the terms of the current Texas Food Establishment Rules, and Title 25, Chapter 228 of the Texas Administrative Code, including Rule 228.221 – Mobile food Units - as amended from time to time by the Texas Department of State Health Services, a copy of the TFER is attached as Exhibit “B” and shall be maintained and filed in the office of the Environmental Health Director.

In the event of a conflict between the provisions of the City Codes and City ordinances and the State rules and regulations, and definitions adopted by reference in this chapter, the provisions of this City Code or ordinances shall prevail.

(B) A term defined by Texas Administrative Code Title 25, Part 1, Chapter 228, (Texas Food Establishment Rules) has the same meaning in this chapter and are hereby adopted as part of this chapter and the City of South Padre Island City Codes, except that if a definition below is different than a definition contained in chapter 228 referenced above, the definitions below in the City Code shall apply and govern.

(C) In this chapter:

- (1) *Permit holder* means the person **or entity** to whom the health authority issues a permit for a mobile food unit permit required by Chapter 10 of the Code of Ordinances.
- (2) *Mobile food unit (MFU)* **except as indicated herein**, has the meaning established in Title 25, ~~Part 1~~, Chapter 228 ~~Subchapter A~~ (Definitions) of the Texas Administrative Code ~~and shall also which and shall~~ mean a vehicle mounted, self or otherwise propelled, self-contained food service operation, designed to be readily movable (including, but not limited to, catering trucks and trailers) and used to store, prepare, display, serve or sell food. Mobile units must completely retain ~~their~~ its mobility at all times. A Mobile Food Unit does not include a stand, a booth, **a pushcart, roadside vendors, boats, and vessels.**

A Mobile food Unit establishment shall be considered as a food establishment and shall be subject to and required to comply with all pertinent City Code regulations contained in Chapter 10, and all state law provision and rules governing food establishments.

- (3) Push carts and roadside food vendors are strictly prohibited.

(D) All mobile food units shall comply with all applicable local and State laws, including the requirements of this article, chapter 228 of the Texas Administrative Code, the Texas Food Establishment Rules, the Rules for Mobile food Units (MFU), which is incorporated herein as Exhibit “A”, and all other Rules and laws adopted from time to time by the Texas Department of State Health Services, except as otherwise provided in this section. The Environmental Health Director may impose additional requirements, to protect against health hazards related to the conduct of the food establishment as a mobile operation to prohibit the sale of potentially hazardous foods. The provisions of this section shall be enforceable by the Environmental Health Director or designee.

(E) Mobile Food Unit and Permit Requirements.

(1) Designated Areas. The designated areas for mobile food units are District zoned "EDC" ("Entertainment District Core"), "BF" ("Bay Front"), and "PBN" ("Padre Boulevard North").

MFU's are not allowed on roads, City ROW's and City property without the written consent of the City.

(2) No more than eighteen (18) mobile food unit permits may be issued per month in the City of south Padre Island.

(3) ~~All Applicants must be supported locally and have the signature of an owner or designee of a licensed, free-standing food unit on South Padre Island before being eligible for a permit. Limit one local owner's (or designee's) signature per applicant~~ must operate from a Central Preparation Facility (hereinafter referred to as a CPF), or other food establishment and shall report to such location daily for supplies, cleaning, and servicing operations, pursuant to Section 228.221(b)(1).

The CPF must be an approved retail food establishment at which food is prepared, stored, and wrapped and where the MFU is supplied with fresh water and ice and where wastewater, grease and other liquids are to be properly disposed and where food-contact surfaces or items not capable of being immersed in the MFU utensil-washing sink are cleaned and sanitized.

The central preparation facility or other fixed food establishment, used as a base of operation for an MFU, shall be constructed and operated in compliance with the requirements of the Food Code, chapter 6- Physical Facilities of the Texas Administrative Code.

The MFU operator must always maintain and display the most recent inspection report of the CPF on the unit.

If the CPF is not owned by the MFU operator, then a signed letter of authorization is required to be maintained on the MFU and must be filed with the permit application.

Use of a private residence as a CPF is prohibited.

(See the Texas food Establishment rules for the operation of Mobile food Units and rule 228.221 – Mobile Food Units of chapter 228 of the Texas Administrative Code, which are both incorporated herein and made part of this City code Chapter)

(4) Permit fees are as follows:

- (a) September through February a monthly fee of \$100 shall be charged.
 - (b) March through August a monthly fee of \$500 shall be charged; or
 - (c) January through December (calendar year), a yearly fee of \$1,800 shall be charged.
- (F) The City Manager may authorize additional "Designated Areas" for additional Mobile Food Establishments as needed. If additional "designated areas" are authorized by the city Manager, conditions to ensure the health and safety of the public may be required before a permit is issued for a MFU to operate in the new designated area. The City Manager, to ensure the health and safety of the public, may require that a plan with the details of the proposed layout with parking be submitted before the issuance of an MFU permit in the newly designated area.
- (G) A mobile food unit must comply with all the provisions of chapter 228, Retail Food Establishments, of the Texas Administrative Code, and the State rules mentioned and incorporated above in this chapter including The Texas Food Establishment Rules (TFER) and the Rules for Mobile Food Units. In addition, the applicant must:
- (1) Obtain a health permit issued by the Health Director or the Environmental Health Director.
 - (2) Demonstrate the mobility of the mobile food unit at all times, if requested by the Environmental Health Director or other city official
 - (3) Provide hand washing facilities within the mobile food truck (i.e. an insulated container with a spigot that can be turned on to allow potable, clean, free flowing warm water; a wastewater container); soap; disposable towels; and a waste receptacle.
 - (4) Show evidence that restrooms and hand washing will be provided for patrons at a convenient area close to the MFU. ~~patrons as necessary.~~
 - (5) Have a current Texas Department of Motor Vehicle Registration Sticker and proof of vehicle liability insurance for the MFU.
 - (6) Provide single-service articles, which are biodegradable or recycled products, for use by the consumers.
 - (7) Must be allowed to participate in South Padre Island special events, subject to conditions set by the City.
 - (8) Present proof of a valid Food Manager Certification if there is open handling of TCS foods.
 - (9) Present proof of a valid Food Handler Certification for all persons handling food, who are not Food Manager Certified.
- (H) The permit holder of a mobile food unit:
- (1) Must also comply with all requirements of Chapter 10 of the Code of Ordinances, and all applicable state law, including the laws, rules and regulations incorporated herein, and mentioned above.
 - (2) Must apply to the Environmental Health Services Department prior to selling anything.
 - (a) A mobile food establishment permit is valid for 30 days, or for the period indicated on the permit.

- (3) Must submit proof of Sales and Use Tax Permit issued by the State of Texas. If the permit allows multiple locations, then you must provide evidence of being a "list filer" and show proof that the City of South Padre Island is included on that list.
- (4) Must always display the Health Permit in a conspicuous place where it can be easily read by the public on the mobile food unit.
- (5) Must always keep the area around the mobile food establishment clear of litter and debris.
- (6) Must have adequate and approved garbage and refuse storage facilities for the operator's use and shall have garbage and refuse storage facilities immediately adjacent to the exterior of the mobile food establishments that are insect and rodent-proof for use by consumers. All garbage, refuse and garbage containers must be removed by the Mobile Food Unit upon departure.
- (7) Must obtain a permit from the Fire Department for the use of Liquid Propane gas equipment for each mobile food establishment and shall make the permit available for inspection upon the request of the Fire Chief or designees or the Environmental Health Director or designee if liquid propane is utilized by the Mobile Food Unit.
- (8) Must submit a plan showing the location, parking layout and other plans deemed necessary, if any, by the Environmental Health director or the City Manager.
- (9) Must allow for the inspection of the proposed location by the Environmental Health Director and for compliance with all local ordinances and all applicable State laws, rules, and regulations before the issuance of a permit.
- (I) A mobile food unit may use a barbecue pit under the following circumstances:
 - (1) The barbecue pit must be enclosed in a trailer or the mobile food unit.
 - (2) The barbecue pit must be used only for cooking. Processing, portioning, preparation, or assembly of food must be conducted from inside the mobile food establishment.
 - (3) A hand-washing system as defined in the Texas Food Establishment Rules, must be provided adjacent to the barbecue pit.
 - (4) Food from a barbecue pit must always be protected from the elements. Including, but not limited to, airborne debris, flying insects, birds, and bird droppings.
- (J) A mobile food unit is limited to signs as required by Chapter 15. The signs must be secured and mounted flat against the mobile food unit and may not project more than six inches from the exterior of the mobile food unit.
- (K) A permanent water or wastewater connection is prohibited.
 - (1) All water used in the mobile food unit must be from an approved public water system. A mobile food unit may also use commercially bottled water.
 - (2) The materials that are used in the construction of a mobile food unit's water tank and accessories shall be safe, durable, corrosion resistant, nonabsorbent, and finished to have a smooth and easily cleanable surface.

- (3) A wastewater holding tank in a mobile food unit shall be sized 15% larger in capacity than the water supply tank and sloped to a drain that is 1 inch in inner diameter or greater and equipped with a shut off valve.
 - (4) Mobile Food Unit tank inlet.
A Mobile Food Unit's water tank inlet shall be:
 - (a) 19.1mm (¾ inch) in inner diameter or less; and
 - (b) Provided with a hose connection of a size or type that will prevent its use for any other service.
 - (c) Fill hose and water holding tank shall be labeled as "Potable Water."
 - (L) Electrical service may be provided by:
 - (1) Temporary service.
 - (2) An onboard generator with the making of noise not to exceed (75) decibels; or
 - (3) Solar panels.
 - (M) A mobile food unit's construction:
 - (1) Exterior shall be of weather-resistant materials and shall comply with all applicable laws.
 - (2) Interior shall be constructed of smooth, durable, easily cleanable surfaces.
The mobile food unit shall be completely enclosed. No open truck beds shall be allowed and windows shall be screened or kept closed.
 - (3) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair and kept clean.
 - (N) Appointments for Mobile Food Unit inspections may be made by contacting the Environmental Health Department at (956) 761-8123, Monday—Friday, 8:00 a.m.—5:00 p.m., excluding holidays.
 - (O) All permit holders shall comply with this section. A violation of this section shall be fined as provided by Section 21-2 of the Code of Ordinances, and as outlined below.
- (Ord. No. 18-15, 5-16-2018; Ord. No. 21-08, 5-19-2021, Ord. No 23-13)

~~Sec. 10-31.1. [Evaluation]~~

~~The Food Truck Planning Committee will meet as necessary, to evaluate the program's effectiveness and will take their recommendations to City Council no later than April 17, 2017.~~

Sec. 10-32. Food trailers; mobility.

Notwithstanding the requirement of mobility, a food trailer which is transported by a vehicle and then detached is permitted so long as both the permit holder and the trailer meet all the other conditions of this ordinance but such trailer must be removed within seventy two (72) hours of the request under Section 10-31(E)(2) **and must be mobile at all times or capable of being mobile and being moved within seventy two (72) hours.**

(Ord. No 23-13)

Sec. 10-33 Suspension of MFU Permit

(A) The Environmental Health Director, the City Manager or his designee may without prior notice, warning or hearing suspend any permit to operate a MFU if:

- 1. The holder of such permit, or the operator of the MFU does not comply with the rules, regulations and requirements contained in this Article II sections 10-10 through 10-32 and all adopted and incorporated state rules, laws, and regulations mentioned in Article II; or**
- 2. If the operation of the MFU otherwise constitutes a substantial hazard to public health.**

(A) Suspension is effective upon service of the notice of suspension to the permit holder or anyone found working at the MFU. When a permit is suspended, food service operations shall immediately cease.

(B) Whenever a permit is suspended the holder of the permit shall be afforded an opportunity for a hearing before the Environmental Health Director, within twenty (20) days after receipt of a written request for a hearing is received by the City.

(C) Whenever a permit is suspended, the holder of the permit shall be notified in writing that an opportunity for a hearing before the Environmental Health director is available only if a written request for a hearing is received by the city within ten (10) days after receipt of the notice of suspension. If no written request for a hearing is filed and received by the city within the ten (10) day period, the suspension is sustained.

(D) The city may terminate the suspension at any time if reasons for the suspension no longer exists.

(E) The hearing shall be held before the Environmental Health Director in accordance with the procedures outlined in Section 10-17 of Article II.

Sec. 10-34 Revocation of a MFU Permit

(A) The city may, after providing an opportunity for a hearing, revoke a permit for serious or repeated violations of the rules, regulations and requirements contained in this Article

II, Sections 10-10 through 10-32, and all adopted and incorporated state rules, laws, and regulations, or for interference with the city in the performance of its duties.

(B) Prior to revocation, the city shall notify, in writing, the holder of the permit or the person in charge, or any worker found at the MFU, of the specific reason for which the permit is to be revoked and that the permit shall be revoked at the end of the ten (10) days after service of the notice of revocation unless a written request for a hearing is filed and received by the city within ten (10) days. If no request for a hearing is filed and received by the city within the ten (10) day period, the revocation of the permit becomes final.

(C) The hearing shall be held before the Environmental Health Director in accordance with the procedure outlined in Section 10-17 of Article II.

(D) The holder of a revoked permit may make a written application for a new permit.

(Ord. No 23-13)

Sec. 10-35 Inspections

(A) The city shall inspect the MFU establishment prior to the issuance of a permit to determine compliance with any approved plans, specifications, the City Code, and State law.

(B) Additional inspections of the MFU establishment shall be performed as often as necessary for the enforcement of this chapter and all other applicable law.

(C) If during an inspection, immediate correction of a matter is not achieved, the city shall verify correction of the violation within three (3) calendar days, unless the violation is a serious health hazard, as determined by the Environmental Health Director, in which case, the MFU establishment shall be closed until corrective measures and compliance is achieved.

(D) Denial of access to city personnel shall be a cause for the suspension or revocation of the permit held by the MFU establishment.

(Ord. No 23-13)

Sec. 10-36

This ordinance shall become effective upon publication, except Sections 10-31 through 10-35 regarding Mobile Food Units shall become effective on May 1, 2024, to give MFU permit holders and applicant sufficient time to prepare for the new regulations.

The requirement that a MFU must be supported by a local food establishment as provided in old Section 10-31 (C) (3) is repealed immediately upon publication of this ordinance.

(Ord. No 23-13)

Sec. 10-37 Penalty

A violation of any provision of Article II Sections 10-10 through 10-35, and any of the State rules, laws and regulations adopted and incorporated therein, is punishable by a maximum fine of Two Thousand Dollars (\$2,00,00), and each day the violation continues shall constitute a separate violation.

(Ord. No 23-13)

~~(Ord. No. 18-15, 5-16-2018)~~

~~Sec. 10-33. [Exceptions].~~

~~Notwithstanding any other provision in this Code of Ordinances, this ordinance governing Mobile Food Units and Food Trailers identified in this Article II provides an exception for any of the activities authorized herein.~~

~~Secs. 10-34—10-49. Reserved.~~

Section 6. This Ordinance shall become effective when published in caption form.

PASSED, APPROVED AND ADOPTED on First Reading, the 15th day of November 2023.

PASSED, APPROVED AND ADOPTED on Second Reading, the 6th day of December 2023.

ATTEST:

**CITY OF SOUTH PADRE ISLAND,
TEXAS**

Angelique Soto, City Secretary

Patrick McNulty, Mayor