

**CITY OF WHARTON
ORDINANCE NO. 2021-23**

AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 42, OCCUPATIONAL LICENSES, TAXES AND REGULATIONS, ARTICLE IV, DIVISION 4 MOBILE FOOD COURTS AND MOBILE FOOD ESTABLISHMENTS, SECTIONS 42-220 TO 42-235; PROVIDING THAT A VIOLATION OF THE ORDINANCE OR ANY PART OF THE CODE AS ADOPTED HEREBY SHALL CONSTITUTE A PENALTY UPON CONVICTION OF A FINE; PROVIDING FOR SEPARABILITY AND SETTING AN EFFECTIVE DATE.

BE IT ORDAINED by the City Council of the City of Wharton, Texas:

WHEREAS, it is the desire of the City of Wharton Code of Ordinances to read as follows:

DIVISION 4. MOBILE FOOD COURTS AND MOBILE FOOD ESTABLISHMENTS

Sec. 42-220. Definitions.

The following words, terms and phrases, when used in this division, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Food truck court means a property used or developed to accommodate more than one food truck as the primary use of the property while possibly accommodating areas on the property for entertainment or recreational opportunities. Food truck courts must have a valid certificate of occupancy in addition to all other applicable permits and inspections.

Ice cream truck means a motor vehicle in which ice cream, popsicles, ice sherbets, or other frozen desserts of any kind are carried for the purpose of retail sale on the streets of the city.

Mobile shall mean the state of being in active, but not necessarily continuous, movement.

Mobile food establishment means an operator of a vehicle mounted, self or otherwise propelled, self-contained food service operation designed to be readily moveable (including, but not limited to, catering trucks, trailers, push carts and roadside vendors) used to store, prepare, display, serve or sell food that requires temperature control. The mobility of a mobile food establishment unit must be completely maintained at all times. No drive-through service shall be permitted from a mobile food establishment.

Sell shall mean the act of exchanging a good for a profit or in return for a donation.

Sec. 42-221. Scope.

This division shall regulate all mobile food establishments operating within the city's corporate limits.

Sec. 42-222. Registration—Permit requirements.

- (a) No person shall operate a mobile food establishment who does not possess a valid, current mobile food establishment permit by the Code Enforcement Department and State Health Permit.

- (b) A mobile food establishment shall make application on a form provided by the code enforcement department, and shall provide all of the information listed in subsections (b)(1)— (7) as part of the application:
- (1) The name and address of the owner and/or operator;
 - (2) If the applicant represents a corporation, association or partnership, the names and addresses of the officers or partners;
 - (3) Name which the food vending operation will operated;
 - (4) A description of the type of food or the specific foods to be vended;
 - (5) A description of the vehicle to be used in the mobile food vending operation along with the license or registration and vehicle identification number of the vehicle;
 - (6) Except ice cream trucks, the locations within the city where the mobile food establishment will operate. Should such locations not yet be established, an updated list of locations shall be provided to the code enforcement department at the time of issuance of permit;
 - (7) Permission including contact information, by each real property owner, verifying that the mobile food establishment is authorized to operate at such location or locations. Should the mobile food establishment acquire additional locations, an updated list shall be provided to the code enforcement department along with written permission from real property owner.
- (c) Any person applying for a mobile food court permit or mobile food establishment permit must submit to a background check of that person's criminal record by the City of Wharton.
- (1) Any person who has been convicted of a misdemeanor involving moral turpitude within the three-year period immediately preceding the date of that person's application for a mobile food establishment permit or mobile food court permit or a felony involving moral turpitude within a five-year period immediately preceding the date of that person's application for registration shall be ineligible to receive a mobile food establishment permit or mobile food court permit. In these circumstances, the code enforcement department and shall reject the application and shall not issue a permit to that person.
 - (2) If the application is rejected for any reason, the applicant must wait 12 months from date of denial before a subsequent application can be filed.
- (d) Upon receiving a completed application for a mobile food court permit or mobile food establishment permit, the administer may make appropriate inspections of the location, equipment, vehicle, and other reasonable inspections concerned and shall issue a permit only if;
- (1) The application complies with subsection (b); and
 - (2) Any inspection reveals compliance with the applicable requirements of all federal and state statutes and regulations, and city ordinances governing the proposed mobile food establishment operation.
- (e) Mobile food establishments during recovery from a declared natural disaster shall be regulated as follows:

- (1) Applicant must possess a current mobile food vendor licensed and certified food manager certificate by Texas Department of State Health Services.
- (2) An original written instrument, executed by each real property owner, verifying that the mobile food establishment is authorized to operate at such location or locations.
- (3) Approval from either the code enforcement department or emergency management.
- (4) Upon approval, applicant may set up for two weeks, depending on severity of the disaster.

Immediately following the two-week period applicant must submit all the information required in subsection (b) and must follow all the subject regulations of this section as to location and rules excluding allowable times and storage on-site.

- (f) Display of Permit. Every permit, including the State Health Permit, shall be displayed at all times in a conspicuous place where it can be read by the general public on the mobile food establishment.

Sec. 42-223. Exceptions.

Notwithstanding any term contained in this division to the contrary, this division shall not apply to the following:

- (1) A nonprofit organization, as defined by the Texas Department of State Health Services.
- (2) Vendors under the auspice of a festival/event sponsor.

Sec. 42-224. Operation requirements.

- (a) Mobile food establishments shall comply with the following requirements:
 - (1) Mobile food establishments shall comply with all sanitation and construction regulations as outlined in TAC § 229.169 of the Texas Food Establishment Rules, as amended.
 - (2) All mobile food establishments are subject to comply with food and beverage certificate as outlined with TABC Section 11.46 General Grounds for Refusal, Section 11.49 Premises Defined; Designation of Licensed Premises, Section 61.43(5), Section 109.31 Municipal Regulation of Liquor, of the Texas Alcohol Beverage Commission, as amended.
 - (3) The issuing, suspension and revocation of licenses for the handling of food by mobile food establishment owners, operators or their employees shall be regulated by the food handling administrator.
 - (4) In order to ensure equal treatment of all mobile food establishment permit holders, variances from this division will not be granted.
 - (5) Except for ice cream trucks, mobile food establishments are prohibited from operating on public rights-of-way. Exception: city-sponsored events.
 - (6) A permitted mobile food establishment may operate at construction sites.

- (7) Mobile food establishments, including ice cream trucks, may operate on private property provided:
 - a. The applicant provides a written instrument or no objection letter verifying that the mobile food establishment is authorized to operate at such location or locations as required in subsection 42-222(b)(7). A copy of the written permission to operate in a specific location shall be kept within the mobile food establishment at all times; and
 - b. Shall provide a written permission from business owner or proprietor to allow employees access to restrooms facilities during all hours of food sales;
- (8) Any properly permitted mobile food establishment may operate in a location in or immediately adjacent to city-sponsored civic events.
- (9) May not use structures that are not intended for mobile food establishments. Examples of acceptable vehicles include, but are not limited to, vehicles 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 emission of noxious gases, odors, and/or fumes.
- (10) Portable fire extinguishers shall be provided. A minimum 2-A, 10-BC multi-purpose fire extinguisher shall be currently inspected and tagged by a licensed technician.
- (11) Mobile food establishments shall have a Type 1 hood installed at or above all commercial cooking appliances and domestic cooking appliances which include flat grills, fryers, char grills, and pits used for commercial purposes that produce grease vapors. Type 1 hood systems shall be installed with an approved and inspected fire suppression system. A Type K fire extinguisher is also a requirement in the installation of a fire suppression system.
- (12) Mobile food establishments shall comply with all commercial building line setback requirements set forth in chapter 18 (Building and Construction) of the Code of Ordinances in subsection 18-77(e), as amended.
- (13) Mobile food establishments owning or leasing property:
 - a. Shall be properly screened by privacy fence of a height not less than six feet in a way to avoid adverse impact upon adjoining properties and the uses thereof;
 - b. Shall provide permanent (not porta-potty) restrooms for all persons operating the unit, including employees;
 - c. Allowed to remain on premises during non-operating hours;
 - d. Shall install a grease interceptor for disposal of grease and grey-water as set forth in Chapter 86 (Utilities and Services Grease Traps) of the Code of Ordinances section 86-23.

- e. Connection of mobile food establishment to a source of electricity, water, and sewer is required on site. A permit shall be obtained for the code enforcement department for each connection and the connection has been inspected and found to comply with city codes. Each permit shall be maintained with the mobile food establishment at all times and made available upon request by city personnel.
- (14) Mobile food establishments are not allowed to operate between two residential structures, with the exception of construction sites or special events. Properly permitted ice cream trucks are allowed within residential neighborhoods if compliant with subsection (a)(15) below.
- (15) Ice cream trucks may stop on public streets or rights-of-way provided such stops:
- a. Are not in or within 50 feet of an intersection;
 - b. Not an area prohibited to the standing or parking of vehicles;
 - c. All items are vended from the curbside of the vehicle or the rear of the vehicle; and
 - d. The ice cream truck is vending in a safe manner.
- (16) Mobile food establishments shall not be allowed to prep on site except one (1) hour before regular operating hours.
- (b) Mobile food establishment inspections are conducted at the City of Wharton Permit Office. An appointment will be made for specific day-date-time. Missed appointments will result in a re-inspection fee. No inspections are conducted off-site. Re-inspection fees shall be \$50.00. Mobile food establishments may be subject to random inspections at any time during the term of the permit.
- (1) *Permit revocation.*
- a. If the permittee fails to comply, then the mobile food establishment permit may be revoked.
 - b. If a mobile food establishment permit is revoked, any fees paid to the city will be forfeited.
 - c. The former permittee may appeal the revocation of a mobile food establishment permit by submitting a written request for appeal to the code enforcement department within ten days of receiving the notice of revocation. The city manager will hold a hearing within a reasonable time of receipt of the appeal, but no later than 30 days after receipt, at which time the former permittee will have an opportunity to explain why the permit should not be revoked. The city manager shall render a decision within 30 days of the date of the hearing. The city manager's decision shall be final.
 - d. Mobile food establishment permits shall not be transferred or assigned and shall be considered revoked should the character of the food vending operation be changed from that specified in the permit.

(2) *Permit renewal and fees.*

- a. Unless sooner revoked, a mobile food establishment permit is valid from date of issue until December 31st of that calendar year. Prior to operating a mobile food establishment, the mobile food establishment will submit the required information along with a fee of \$12.50/unit per month from the date of the application through December 31st of that calendar year.
- b. The mobile food establishment fee for the period January 1st through December 31st shall be \$150.00/unit.
- c. Such permits shall be issued on the earliest date of submission of the completed application.
- d. Every mobile food establishment permit shall be renewed at least each year in like manner as the original permit application.
- e. All funds collected for permits under the provisions of this division shall be deposited in the general fund of the city.
- f. Mobile food establishment permits shall be valid for special events.

Sec. 42-225. Food truck courts.

- (a) Food truck courts shall be permitted land use with the city council's discretionary approval of a specific use permit on property as outlined in subsections 42-224(a)(12) and (13).
- (b) A specific use permit for a food truck court may be revoked by the city council if it finds that any condition imposed at the time of granting the permit is not met, or if thereafter ceases to exist. The city council may deny a specific use permit for a food truck court if the development of said use would be detrimental or offensive to the surrounding area or otherwise be contrary to the health, safety or general welfare of the city and its inhabitants. In approving or denying a specific use permit for a food truck court, the city council shall consider:
 - (1) The nature of the proposed use;
 - (2) Proximity to other food trucks;
 - (3) Proximity to existing "brick and mortar" restaurants;
 - (4) The number of food trucks allowed within the food truck court at a single time;
 - (5) Existing uses in surrounding areas;
 - (6) Noise, dust, light, and traffic generated;
 - (7) Health and sanitary condition; and
 - (8) Compliance with other regulations of the Code of Ordinances.
- (c) Food truck courts shall be \$75.00 per space/per calendar year and payable upon issuance. Fees will not be prorated.
- (d) All food trucks utilizing food courts must possess a current mobile food establishment permit issued by the City of Wharton.

Sec. 42-226. Hours of operation.

(a) *Mobile food establishments.*

- (1) Food trucks shall only be allowed to engage in sales operations between the hours of 7:00 a.m. and 8:00 p.m.

(b) *Food truck courts.*

- (1) Food truck courts shall only be allowed to engage in sales operations between the hours of 7:00 a.m. and 8:00 p.m. with the exception of a city-sponsored event.

Sec. 42-227. Signage.

All signage pertaining to or advertising a food truck and/or its menu shall be attached to the food truck. There shall be no limit to the amount of signage that is allowed on a food truck while the food truck is parked at a food truck court or operation site. A food truck shall not be outfitted with "changeable signage" as defined and/or set forth in chapter 66 (Signs) of the Code of Ordinances. With an exception of one sandwich board which may be placed during business hours, but must be removed daily.

Sec. 42-228. Off-street vehicle parking.

(a) *Mobile food establishments.*

- (1) 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.

(b) *Food truck courts.*

- (1) Two off-street vehicle parking shall be required for each table that is provided for use by the food truck customers. If no tables are provided, no off-street vehicle parking shall be required.

Sec. 42-229. Authority to enforce.

The code enforcement department shall have authority to enforce the provisions of this division, and to enlist the assistance of all appropriate agencies in the enforcement effort.

Sec. 42-230. Permit and license revocation.

Nothing in this division shall prevent the code enforcement department from immediately revoking a mobile food establishment and food truck court permit should such vendor be in violation of this division or any other city code or ordinance.

Sec. 42-231. All codes and ordinances effective.

In addition to the provision of this division, all other applicable city codes and ordinances shall apply to the operation of any mobile food establishment and food truck court, and shall be in full force and effect. This policy shall be effective even if the vendor has applied for and obtained a valid license and permit to operate, should the violations occur either prior or subsequent to obtaining such permit.

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Secs. 42-232—42-235. Reserved.

Fine and Penalty for Violations

Sec. 18-145. Penalties. Any person violating any of the terms or provisions of this article shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than \$100.00 or more than the maximum provided in section 1-5 for each offense. If the terms or provisions of this article are violated by any corporation or firm, the officers and agents actively in charge of the business of such corporation or firm and the person actually performing the work for such corporation or firm shall be subject to the penalties provided in this section.

Separability

If any court of competent jurisdiction rules that any section, subsection, sentence, clause, phrase, or portion of this ordinance is invalid or unconstitutional, any such portion shall be deemed to be a separate, distinct, and independent provision, and any such ruling shall not affect the validity of the remaining portions hereof.

Effective Date

This Ordinance shall become effective on the 3rd day of December 2021.

Passage and Approval

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, on the 22nd day of November 2021.

CITY OF WHARTON, TEXAS

By: *Tim Barker*
TIM BARKER
Mayor

ATTEST:

Paula Favors
PAULA FAVORS
City Secretary

APPROVED AS TO FORM:

Paul Webb
PAUL WEBB
City Attorney



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