

ORDINANCE 2023 – 11 – 01

AN ORDINANCE OF THE CITY OF COMMERCE, AMENDING CHAPTER 50 “HEALTH AND SANITATION”, ARTICLE II “FOOD AND HEALTH ESTABLISHMENTS” AND ADDING A “DIVISION III” UNDER “ARTICLE II” TITLED “MOBILE FOOD UNITS & FOOD TRUCK PARK” TO INCLUDE SECTIONS 50.52 – 50.56, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR A SEVERABILITY CLAUSE;; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Commerce, Texas, is a Home Rule Municipality acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the City Council of the City of Commerce seeks to adopt regulations governing food services establishments, which include mobile food units in accordance with Chapter 437 of the Texas Health and Safety Code; and

WHEREAS, the City of Commerce seeks to protect the public health, safety and welfare of its citizens through the establishment of regulatory guidelines for mobile food units and food truck parks to operate within the City of Commerce; and

WHEREAS, the Commerce City Council has assessed potential traffic safety issues, utility needs of mobile vendors in terms of water and wastewater, and how those demands correspond with the city’s utility plans and infrastructure; and

WHEREAS, the City Council is authorized to regulate Mobile Food Units/Vendors by virtue of the Texas Constitution, the Texas Health and Safety Code, the Texas Administrative Code, and by Chapters 51, 54, 211, 212, 214, 216 & 217 of the Texas Local Government Code; and

WHEREAS, the City Council has determined it appropriate and in the best interest of the citizens of Commerce to adopt this ordinance amending Chapter 50 of the Code of Ordinances of the City to remove and update language from our Code of Ordinances that relates to regulations of mobile food units and mobile food parks; and

WHEREAS, the City Council of the City of Commerce finds and determines that the adoption of this Ordinance is necessary to protect the public health, safety and welfare of the residents of the City of Commerce and the City Council now adopts the appropriate administrative and regulatory amendments rules and procedures as outlined below;

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

SECTION 1. Purpose and Intent. The purpose of this division is to allow for mobile food units to operate within the city on private property and city-owned property for a limited period of time. This division also allows for food truck parks as a principal use. This division does not apply to pushcarts which require appropriate health district permits and temporary vendor permits. Mobile food units operating within the public right-of-way require a solicitor's permit and must comply with the operational requirements in this division and Section 90.171 of this code.

SECTION 2. Amendment. Article II of Chapter 50 of the Code of Ordinances for the City of Commerce is hereby amended to read as follows:

ARTICLE II. FOOD AND FOOD ESTABLISHMENTS

Sec. 50-26. Definitions.

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 means any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

Food establishment means all food service establishments, food processing establishments, retail food stores, mobile food units, and temporary food service establishments.

Food processing establishment means a commercial establishment in which food is manufactured or packaged for human consumption and all commercial establishments bottling water or other liquids intended for human consumption. The term "food processing establishment" does not include a food service establishment or commissary operation.

Food service establishment means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term also includes delicatessen-type operations that prepare sandwiches intended for individual portion service and commissaries. The term does not include private homes where food is prepared or served for individual family consumption, the location of food vending machines or supply vehicles.

Person to person sale of food or food products means and includes the preparation, serving, or sale of food products for human consumption made by any person from containers powered by human motive power, whether such containers be wheeled or carried by attachment to the person of such person.

Potentially hazardous food means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, and which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include: clean, whole, uncracked, odor-free shell eggs; foods that have a pH level of 4.5 or below or a water activity (aw) value of 0.85 or less under standard conditions; food products in hermetically sealed containers processed to prevent spoilage.

Retail food store means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include establishments which handle only prepackaged, non potentially hazardous foods; roadside markets that offer only fresh fruits and fresh vegetables for sale; food

service establishments; farmers' markets; or food and beverage vending machines as defined in the Vending of Food and Beverages, 1978, Department of Health, Education and Welfare Publication No. (FDA) 78-2091.

Temporary food service establishment means any food service establishment that operates at a fixed location for a period of time of not more than 14 consecutive days in conjunction with a single event or celebration.

Event center. A facility consisting of multi-purpose rooms, outdoor courtyards, or recreational facilities used for hosting social gatherings such as weddings, parties, receptions, dances, and festivals.

Food truck park (court). A property used or developed to accommodate one (1) or more food trucks 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 and accommodate all requirements of use.

Mobile food unit (food truck). An operational motor vehicle and/or enclosed trailer from which food and associated non-alcoholic beverages are prepared, served and/or sold on public or private property for a period of time which exceeds 60 minutes or two instances of 30 minutes each day. This definition shall also apply to any seating, garbage and/or recycling containers, restrooms, gear or equipment that is associated with the food truck's operation.

Operation site. The geographic area, not located within a food truck court, within which the food truck will park, prepare, and sell food and/or associated non-alcoholic beverages. This also includes areas where the food truck's customers go to consume food and/or non-alcoholic beverages sold from the food truck. The sale of merchandise other than food and non-alcoholic beverages shall not be permitted other than that contained within or upon the mobile food unit.

Sec. 50-27. Adoption of rules and regulations as basis for food sanitation standards.

- (a) *Adoption of state regulations.* There is hereby adopted the state food, drug and cosmetic act, V.T.C.A., Health and Safety Code § 431.001 et seq., together with the latest editions of the state health department rules on food service sanitation and rules on retail food store sanitation. The cited rules as they now exist and as they may be amended from time to time are adopted by reference and made a part of this article except as otherwise provided in this article, and will be used as the basis for required food sanitation standards.
- (b) *Adoption of federal regulations.* For the purpose of regulating the sale of food and beverages through vending machines, the unabridged form of "Vending of Food and Beverages," 1978 Edition, as published by the U.S. Department of Health, Education and Welfare, publication number FDA 78-2091 is hereby adopted and made a part of this article to the same extent as if set out in full in this article.
- (c) *Municipality defined.* The word "municipality," as used in the publications adopted by this section, shall be understood to refer to the City of Commerce, Texas.
- (d) *Copies on file.* A copy of each of the publications described in subsections (a) and (b) of this section is on file in the city secretary's office.
- (e) *Violations.* Any person violating any provision of this article and the codes adopted by this section shall be punished as provided in section 1-14. A separate offense shall be deemed committed on each and every day any such violation continues.

Sec. 50-28. Same—Location; operation generally.

No mobile delivery vehicle and no person preparing, serving or selling foods from person to person shall have any exclusive right to any location in or on the public streets or other public property of the city, nor shall such vehicles or persons be permitted a stationary location, nor shall such vehicles or persons be permitted to

operate in any area where operations impede or create hazards to motor vehicle or pedestrian traffic or inconvenience the public, nor shall such vehicles or persons be permitted to operate on any one-way street in the city. For the purpose of this section, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

***End of Ordinance Amendment**

Section 3: Article II of Chapter 50, of the Code of Ordinances for the City of Commerce is hereby amended to add Division 3 “Mobile Food Parks & Mobile Food Units” which shall read as follows:

DIVISION 3—MOBILE FOOD PARKS AND MOBILE FOOD UNITS

Section 50-51 Requirements for mobile food units.

- (a) Use generally. A mobile food unit is allowed as a temporary food service operation that supports a commercial business office or industrial park in approved locations in the city, and in conformance with the zoning ordinance.
- (b) Accessory use only; associated primary uses. Mobile food units and/or push carts are prohibited except as an accessory use supporting the following:
 - (1) Commercial businesses:
 - (A) In the corridor district (CD) district in connection with a business promotion event permit issued by the community development department in connection with a downtown business, may be approved for a period not to exceed eight (8) hours of operation per day over a two (2) day period with a maximum of one (1) business promotion event permit per year.
 - (B) Business promotion events shall be located adjacent to or in front of their business. A maximum of no more than two (2) parallel and three (3) angled parking spaces (handicapped spaces excluded).
 - (C) The fee shall be fifty dollars (\$25.00) per day or a total of fifty dollars (\$50.00) for a two (2) day period. A bi-annual permit is also available for \$125.00 and will be valid for a period of 6 months from the date of issuance and an annual permit is \$225.00 and is good for 12 months from the date of issuance. Please refer to Appendix C of the City of Commerce Code of Ordinances for a complete schedule of “Fees, Rates and Charges.”
 - (D) Business promotion event permit application forms and guidelines shall be provided by the community development department.
 - (2) Event centers;
 - (3) Municipal parks and recreation facilities;

- (4) School districts, higher education facilities, corporate office campuses, and business/industrial parks, at which the mobile food unit provides service to the students or employees of the hosting organization; and
- (5) Catering for private events where the mobile food unit is located on private property and will not adversely affect property access or traffic flow, or otherwise cause a nuisance to the area.
 - (A) The mobile food unit shall be parked a minimum of ten (10) feet from any structure.
 - (B) Catering operations shall be limited to 9:00 a.m. to 10:00 p.m. in residential areas.
- (c) Operation to be temporary in nature. Mobile food units are meant to be open on-site only on a temporary basis. As such, the following requirements shall be met:
 - (1) New connections to city water or wastewater infrastructure are prohibited;
 - (2) New electric meters are prohibited; and
 - (3) It shall be unlawful for the owner of a mobile food unit to park the vehicle overnight at the location of their associated primary use unless it is at a designated food truck park or during a multi-day event or festival.
- (d) Permit.
 - (1) Required. A semi-annual permit is required for the operation of a mobile food unit within the city limits. The owner of the mobile food unit is responsible for obtaining the permit. First-time permit applications are accepted and reviewed by the office of community development prior to commencing any sales from the mobile food unit. This permit shall be displayed at all times in a conspicuous place where it can be read and viewed by the general public.
 - (2) Permission from property owner. Permission letters from the property owner(s) are required for the mobile food unit's proposed locations during the calendar year. Such letters shall be required with the permit application.
 - (3) Sales tax number. A copy of the sales tax number for the mobile food unit is required with the permit application.
 - (4) Fee. A fee as set forth in the fee schedule in appendix C of this code shall accompany the permit application to cover the cost of inspections by the building and fire departments.
 - (5) Term. The mobile food unit permit is valid for 180 calendar days from the date of issuance. Each mobile food unit vendor is responsible for obtaining a valid permit. This permit shall be displayed at all times in a conspicuous place where it can be read and viewed by the general public.
 - (6) Issuance or denial; revocation. The building official, in approving or denying

such application, shall consider the nature of the use; existing uses in surrounding areas; noise, dust, light, and traffic generated; health and sanitary conditions; and compliance with other regulations of this article. The building official shall have the right, upon finding that a hazard or nuisance shall exist by continuing such use, to revoke any temporary use at any time or to deny any extension. After such revocation, such temporary use shall immediately cease and all temporary structures shall be removed within ten days of notification of such finding.

(e) Site location criteria.

- (1) Mobile food units shall not locate on public streets.
- (2) Mobile food units shall not be located within fifty (50) feet of a single-family dwelling unit. This measurement shall be taken from the property line of the dwelling unit to the closest point of the mobile food unit location.
- (3) Mobile food units shall not locate in access drives, fire lanes, or public alleys.
- (4) **Mobile food units shall not be located on sidewalks in or along the right-of-way without prior approval from the city. Approval may be granted if a minimum width of five (5) feet of sidewalk remains free of any obstructions.**
- (5) Mobile food units may not occupy any parking spaces needed for the minimum required parking for the primary use.
- (6) Mobile food units shall be located a minimum of fifteen (15) feet from fire hydrants and five (5) feet from any utility box, ADA accessibility ramp, or building entrance.

(f) Operational requirements.

- (1) The mobile food unit shall be in compliance with the Hunt County Health District regulations and applicable city building and fire department regulations.
- (2) All signage and identification for the mobile food unit shall be on or attached to the vehicle. Menu items may be displayed on sandwich boards which are not attached to the vehicle. A food truck shall not be outfitted with any manner of "prohibited sign" as defined and/or set forth in Chapter 22, Article X, "Signs" of the Commerce Code of Ordinances. Signage containing profanity, lewd or obscene images shall be prohibited.
- (3) The hours of operation for any mobile food unit within the city limits shall be limited to the following days and times:
 - (A) Monday through Thursday, and Sunday: 7:30 a.m. to 10:00 p.m.
 - (B) Friday through Saturday: 7:30 a.m. to 11:00 p.m.
- (4) All food vending transactions shall occur from the vehicle.
- (5) No trash or grease shall be left at the site after departure of the mobile food unit,

except in existing on-site containers specifically designed for such waste.

- (6) Vehicles, generators, and other equipment shall be maintained so as to be in operable condition at all times.
- (7) All generators shall have functional noise attenuation devices in order to minimize noise pollution at temporary sites.
- (8) Durable exterior-grade finishes and decorations shall be utilized for all exterior materials on the vehicle and shall be maintained in accordance with minimum property, structural and health standards.
- (9) All mobile food units must park on an improved surface unless they are located at an approved food truck park and subject to the park's conditions.
- (10) No mobile food unit may be located on a vacant lot, unless it is adjacent to the adjoining parcel owned by the primary business granting permission.
- (11) All mobile food units shall provide self-closing lidded trash receptacles. The trash receptacle must be placed outside next to the unit for use by patrons of the unit. The area around the unit must be kept clean and free from litter, garbage, and debris.
- (12) Any unauthorized connection to the water system and/or unauthorized dumping of grease into the sanitary sewer system in conjunction with the operation of a mobile food unit in any way is strictly prohibited and is unlawful.

Section 50-52 "Food Truck Parks":

- (a) Allowable locations; operational requirements. Food Truck Parks shall comply with the Zoning ordinance and all food truck parks shall require a certificate of occupancy and be subject to the following requirements:
 - (1) Compliance with applicable regulations. All food truck parks shall comply with all applicable regulations of the Hunt County Health District, adopted building codes, the International Fire Code, this article, and all other applicable federal state and local laws. All food truck parks shall be on legally platted lots.
 - (2) Removal of units from site. All mobile food units shall be removed from the food truck park upon closing of the park for the season or if the food truck service is closed for one (1) week or more.
 - (3) On-site manager. There must be a designated manager of the site that is responsible for the orderly organization of mobile food units, the cleanliness of the site, and the site's compliance with all rules and regulations during business hours.
 - (4) Utility service required. Each site at the food truck court on which a food truck will be located and operated shall be provided hookups for electricity and potable water. Each individual food truck is not permitted to operate a generator at the site unless emergency circumstances necessitate the need for the use of a generator on a temporary basis not to exceed two hours within any given six-hour period of time.

- (5) Restrooms. Restrooms must be provided on-site within the food truck court for the use of the food trucks' and the food truck court's customers, operators and employees. The minimum number and type of restrooms shall be determined based on the occupant load of the food truck court. Such restroom(s) must remain open and available for use at all times during which the food truck court is being used. When permanent or temporary restrooms are provided, they shall comply with required setbacks for the district they are located within and shall be placed within a full screening enclosure on all sides and shall be serviced on a regular basis. All restrooms, permanent or temporary shall be ADA compliant.
- (6) Development standards. Food truck parks may be stand-alone establishments or may be located on a property with other permanent uses (i.e., retail establishments). These properties shall be designed to be able to accommodate all required development standards for all primary uses.
- (7) Sale of alcoholic beverages. Food truck parks that are eligible to sell alcohol may do so provided they meet the requirements of the Texas Alcoholic Beverage Code, the state alcoholic beverage commission and the city code. Alcohol shall only be sold from a fixed location.
- (8) Parking surface. Mobile food units shall not be parked on unimproved surfaces and at a minimum be parked on compacted gravel base, where approved by the planning and zoning commission.
- (9) Signs. One on-premises sign is permitted at the entrance(s) identifying the food truck park subject to the sign regulations for the applicable zoning district. Each mobile food unit may have attached signage.
- (10) Distance requirements (property line measurement). A food truck park shall not be less than 100 feet from another food truck park.
- (11) Screening and buffering. Food truck parks adjacent to single-family zoned or used property (not including a mixed-use structure) shall provide screening and buffering.
- (12) Off-street parking. All food truck parks shall provide off-street parking. Off-street parking may be provided by way of shared or joint off-site parking arrangements within 1,000 feet of the park.

(a) Mobile food parks.

- (1) One (1) off-street vehicle parking space shall be required for every one hundred fifty (150) square feet of dining area. The minimum number of required customer parking spaces may be reduced by the planning and zoning commission or the city council as part of the site plan approval process.

(b) Food truck operation sites.

- (1) A minimum of two (2) off-street parking spaces are required for each food truck at an operation site. One (1) additional off-street vehicle

parking space shall be required for each table that is provided for use by food truck customers. Parking that is provided for food truck customers may not also be used to satisfy the minimum parking requirements of another land use. Any customer parking that is provided must be finished with concrete or asphaltic surface materials.

- (13) Seating and other amenities. Park owners are encouraged to provide for an aesthetically pleasing environment which includes shade and seating elements in addition to pervious ground cover.
- (14) Noise regulations. All food truck parks shall comply with the noise regulations in the city code. No amplified sound shall be permitted after 10:00 p.m.
- (15) Floodplain regulations. All food truck parks shall comply with adopted floodplain regulations.

Section 5. All ordinances and parts of ordinances in force in the City of Commerce which conflict with the terms and provisions of this ordinance are hereby repealed insofar as they conflict with this ordinance, but all other portions of said ordinances shall remain in full force and effect.

Section 6. If any section, subsection, word, sentence, or phrase of this ordinance is declared to be invalid it shall not affect the validity of this ordinance.

Section 7. Any person violating the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding TWO THOUSAND AND NO/100 (\$2,00.00) DOLLARS.

Section 8. This Ordinance shall take effect and be in force from and after its passage and approval in accordance with the Charter of the City of Commerce.

PASSED AND APPROVED on the FIRST READING this the 17th day of October, 2023.

PASSED AND APPROVED on the SECOND READING this the 21st day of November, 2023.

ATTEST:

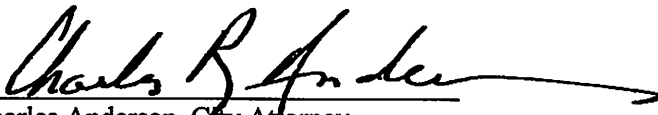
CITY OF COMMERCE, TEXAS


Molly Jacobsen, City Secretary


Teddy Reel, Mayor

(seal)

APPROVED AS TO FORM:


Charles Anderson, City Attorney