

ORDINANCE NO. 2021-12

AN ORDINANCE OF THE CITY OF CANTON, TEXAS, AMENDING ORDINANCE 2020-2, SECTION 5.4.1 (CITY OF CANTON ZONING ORDINANCE), AS HERETOFORE AMENDED, BY REGULATING THE USE OF MOBILE FOOD UNITS WITHIN THE CITY OF CANTON, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Canton desires to implement regulations for mobile food establishments to ensure the health and safety of the general public by mobile food units – both limited, commonly referred to as “push carts,” and full service, commonly referred to as “food trucks,” amending the fee schedule, and establishing application and inspection requirements for mobile food units operating inside the city limits of Canton; and

WHEREAS, the City Council of the City of Canton desires to establish criteria for all mobile food establishments on the types of units allowed, where and how they can operate to ensure the safety of the general public and food inspections to promote food safety standards and protect the general health of the public; and

WHEREAS, the City Council of the City of Canton desires to establish criteria for mobile food unit construction, general maintenance, and general operation procedures to ensure uniformity of all mobile food units; and

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

WHEREAS, pursuant to Chapter 211 of the Texas Local Government Code, the City has the authorization to establish zoning regulations; and

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

SECTION 1. That Section 5.4.1 of Ordinance 2020-2, Canton Zoning Ordinance, be hereby amended to include more terms, definitions, updates to the permit fee schedule and inspection requirements for all mobile food units and shall be amended from time to time as necessary by separate ordinance.

SECTION 2. That any provisions of the ordinances of the City of Canton in conflict with the provisions of this Ordinance or the Zoning Ordinance and Map, as amended hereby, be, and the same are hereby, repealed.

SECTION 3. That should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance or the Comprehensive Plan, as amended hereby be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance or the Comprehensive Plan as a whole, or any part or provision thereof, other than the part decided to be invalid, illegal or unconstitutional.

SECTION 4. Any violation of this Ordinance shall be a misdemeanor affecting the public health, safety, and welfare and the penalty for violating the provisions of this Ordinance shall be a fine not to exceed Two Thousand and No/100 (\$2,000.00) Dollars. Each day that a violation of the provisions of this Ordinance occurs shall be a separate offense.

SECTION 5. That this Ordinance shall take effect immediately from and after its passage and the publication of the caption as the law in such cases provides.

DULY PASSED by the City Council of the City of Canton, Texas, on the 17th day of August, 2021.



APPROVED:

Lou Ann Everett

Lou Ann Everett, Mayor

ATTEST:

Debra Johnson

Debra Johnson, City Secretary

EXHIBIT "A"

SECTION 5.4.1

GENERAL INFORMATION PERTAINING TO ALL MOBILE FOOD UNIT TYPES

I. Definitions

- A. **Charitable Event:** Any event, function or gathering which is not in violation of any federal or state law or any ordinance or regulation of the City which is sponsored, organized and overseen by an exempt organization and takes place either on private property or on property owned or controlled by a government unit (such as the City of Canton, Van Zandt County, or the Canton Independent School District) with the approval of the local governmental unit having control of such location
- B. **Commissary also known as Central Preparation Facility (CPF):** a permitted fixed food establishment that serves as an operating base for a mobile food unit. The commissary is where the vehicle will be stored, parked, serviced, cleaned, supplied and maintained.
- C. **Exempt Organization:** An exempt organization shall mean any of the following groups which regularly carry on activities within the City and have current members who reside within the City:
 - 1. Any charitable, benevolent, veterans or civic group;
 - 2. Any service club which regularly meets in the City;
 - 3. Any school located within the City as well as any student organizations, booster clubs or parent/teacher organizations from any of such schools;
 - 4. Any church which has regular worship services within the City; or
 - 5. Any nationally or regionally recognized youth organization (such as Girl Scouts or Boy Scouts) which has a troop or group which regularly meets in the City and has members who reside in the City.
- D. **Mobile Food Unit (Limited):** mobile food push carts including, but not limited to, coffee carts, hot dog carts, ice cream carts, corn carts, etc. which have limited preparation on an un-motorized mobile unit.
- E. **Mobile Food Unit (Full Service):** a food service establishment that stores, prepares, displays, serves, sells, or distributes any food or beverage from a mobile food preparation unit that is not operating at a permanent fixed location. A mobile food

service establishment is vehicle-mounted or wheeled and capable of being **readily moveable**. A mobile food unit is fully self-contained.

- F. **Property owner:** a person(s), entity or corporation in whom is vested the ownership or title of real property

- G. **Special Event:** a temporary event or gathering, using either private or public property, which involves one or more of the following activities (except when the activity is for construction or house-moving purposes only) (a) closing a public street; (b) blocking or restriction of public property; (c) a gathering of more than 50 persons on public property; (d) sale of merchandise, food, or beverages on public property or on private property where otherwise prohibited by ordinance; erection of a tent on public property, or on private property where otherwise prohibited by ordinance; (f) installation of a stage, band shell, trailer, van, portable building, amusement rides, grand stand or bleachers on public property, or on private property where otherwise prohibited by ordinance; (g) placement of portable toilets on public property, or on private property where otherwise prohibits by ordinance; or (h) placement of temporary “no-parking’ signs in a public right-of-way

II. Regulations

All Mobile Food Units are subject to the following regulations and all other city, state or federal regulations, except in the FMB-A1 and FMB-A2 First Monday Business Zoning District which operate during First Monday Trade Days:

A. Location / Hours of Operation

1. Location

- a. Ice Cream trucks shall be allowed to operate in all zoning districts, including residential.

- b. All mobile food units other than Ice Cream Trucks shall be allowed to operate in all zoning districts except those classified as residential.

- c. All MFUs shall be located on an individual private parcel where an existing permanent business operates in a building with a certificate of occupancy.

- d. Except for charitable events conducted with the permission of the City of Canton, it shall be unlawful for any person to establish, maintain or operate a mobile food unit upon any public street, alley, median, thoroughfare, sidewalk, school property, public park or any public property.

- e. Except for charitable events conducted at a location approved by authorized City personnel, it shall be unlawful for any person to locate or operate a mobile food unit at any location unless there is adequate parking available for customers on the property on which the mobile food unit is located. Parking will be presumed to be inadequate if the operation of the mobile food unit blocks, obstructs, or unduly hinders passage on pedestrian or vehicular traffic on public streets or alleyways in any way.
- f. The prohibition on the obstruction of traffic shall not apply to an exempt organization or a person sponsored by an exempt organization operating a MFU at a charitable event if: (i) a special event permit has been obtained from the City; and (ii) the MFU is being operated within an area which has been approved by the City for the charitable event. The requirement for the approval of the location of the charitable event must be satisfied even if the charitable event is on property which is not owned or under the jurisdiction of the City.
- g. MFUs, including any applicable seating, may operate in parking spaces in a commercially-zoned individual property, parcel, tract or platted lot, if the required parking for the renter remains in compliance with the parking code. A site plan indicating the specific location(s) is required.
- h. All MFU's must be at least 100 feet away from the door of a restaurant. Mobile food parks shall be measured from the park's closest property line.
- i. MFUs must be parked on a paved surface designated for vehicle parking with adequate parking for patrons.
- j. MFUs shall not operate in driveways, in fire lanes or on public roads.
- k. MFUs shall not impede access to the entrance or driveway of any adjacent building.
- l. No MFUs, their merchandise, advertising, or seating shall obscure traffic sight visibility.
- m. MFU's shall be located within a distance of 500 from a public restroom facilities.

- n. MFUs shall not use stakes, rods, or any method of support that is required to be drilled, driven, or otherwise fixed, in asphalt pavement, curbs, sidewalks or buildings.

2. Hours of Operation

- a. MFUs shall be removed from the parcel on a daily basis and may only operate during the business hours of the primary business and may not be parked longer than twelve (12) hours.
- b. MFUs may not operate for more than three (3) consecutive days at any one location

B. Licensing / Permitting

- 1. No person shall operate a mobile food unit who does not possess a valid, current Mobile Food Unit permit issued by the City of Canton, Texas.

2. Requirements for City Permit:

- a. Completed City of Canton application for MFU;
- d. Sales tax permit with the requirement that the City of Canton shall be reported for all sales within its city limits;
- e. Applications must be completed at least thirty (30) days before the start of operation within the City;
- g. MFUs shall provide the City with a copy of written permission from the property owner to allow the operation of a MFU and to allow the MFU and their customers access to a commercially-plumbed public restroom onsite. The authorization shall include the specific dates and times during which the mobile food unit is authorized to be present on the premises.

If permission from the property owner is revoked, the MFU owner must present the City with written permission from a new property owner before operations may continue.

- h. All MFUs shall have a valid vehicle registration, motor vehicle operator's license, proof of vehicle liability insurance, a Texas Sales Tax Permit and meet all other state licensing requirements.

- i. A site plan depicting the location of the food truck on the property. If there are to be multiple locations for the MFU, a site plan must be presented for each separate location.

3. Permit Fees

Special Events (City-sponsored/related) - \$25.00
Special Events - \$50.00
Limited Service Food Truck - \$100.00
Full Service Food Truck - \$200.00

4. The food permit fee (and any other associated fees) must be paid before a food permit will be issued.

5. City MFU permits are valid for one year and are not transferable.

6. Violation of Permit

- a. Violations of the permit requirements are subject to corrective action up to and/or including, discarding of food products, revocation of the permits and fines.
- b. Those persons found operating in the City of Canton without a valid City MFU permit (deleted or State license) are subject to fines up to \$2,000.00.

7. Suspension of Permit

- a. The City of Canton may suspend the MFU permit if the operation of the MFU constitutes an imminent hazard to public health.
- b. Suspension is effective upon service of a notice as provided. When a permit is suspended, food operations shall immediately cease.
- c. The holder of the permit or the person in charge of the MFU shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the regulatory authority by the holder of the permit within ten days. If no written request for hearing is filed within ten days, the suspension is sustained. The regulatory authority may end the suspension at any time if the reasons for suspension no longer exist.

9. Revocation of Permit

- a. The City of Canton may revoke the MFU permit if:
 - (1) Any information provided on the application is not correct or updated; and/or
 - (2) If the MFU is found to be out of compliance with any city and/or state regulations;
 - (3) The operator has any unpaid sales tax obligations owing to the State of Texas.
 - (4) If any condition set forth in this Ordinance which existed at the time the permit is issued ceases to exist.
- b. If a permit is revoked, the application fee shall be forfeited and the permit shall be surrendered to the City. A permittee whose permit has been revoked may not reapply for a permit for a period of one year from the date the permit was revoked.

10. Appeal Process

An applicant or permittee may appeal the denial of an application, or the suspension or revocation of a permit, to the Board of Adjustment by giving written notice to the City Secretary at City Hall not less than seven (7) business days from the date notice of the adverse action is mailed to the appellant.

An applicant or permittee (referred to in this section as “appellant”) will be given written notice of the denial of an application, suspension, or the revocation of a permit (referred to in this section as the “adverse action”). The notice will be mailed to the address shown on the appellant’s application. Following any adverse action, an appellant may request a hearing on the matter before the Board of Adjustment by giving written notice to the City Secretary of that request. Such notice by the appellant to the Board of Adjustment must be delivered to the City Secretary at City Hall not less than seven (7) business days from the date notice of the adverse action is mailed to the appellant. The City Secretary will schedule a hearing on the matter at City Hall and will provide appellant with written notice of the date, time and location of the hearing. At the hearing, the Board of Adjustment will consider the information provided by the appellant and will either affirm, overturn or modify the prior decision. The decision of the Board of Adjustment shall be final.

C. Operations

1. A drive-through is not permitted in conjunction with the MFU and shall not provide a drive-through service of any kind.
2. Temporary connections to potable water are prohibited. Water shall be from an internal tank, and electricity shall be from a generator or an electrical outlet via a portable cord that is in conformance with the Electrical Code as adopted by the City of Canton.
3. Except as otherwise limited by the City of Canton ordinances, MFUs may utilize outside seating consisting of a portable table and a seating capacity not to exceed six (6) persons
5. Alterations, removal, attachments, additions, placement or change in, under, or upon a mobile food unit that would prevent or reduce ready mobility are prohibited.
6. The operator of a MFU shall demonstrate the vehicle is readily moveable, if requested by a City representative, Code Enforcement Officer, or a law enforcement officer.
7. One (1) A-frame advertising sign shall be allowed for each MFU.
8. Any and all individual(s) and/or entity(ies) operating a MFU on private property must have a written agreement authorizing such operation with the landowner. Each individual and/or entity operating a MFU shall maintain a copy of the written agreement at their location and produce said agreement upon request.
9. It is the responsibility of the MFU owner/operator to ensure that all federal, state laws and applicable City ordinances are met.
10. The noise level of mechanical equipment or outside sound equipment used in association with any MFU may not exceed 70 decibels when measured at the property line that is across the street from or abutting a residential use.
11. An operator of a MFU is prohibited from using PA systems, bells, or music.
12. Smoking shall not be allowed within twenty (20) feet of the MFU.

D. Inspections

1. MFUs are subject to inspection any time the unit is stopped and serving the public.
2. Documents Required at Inspection:
 - a. Current license plate attached for a motorized vehicle;
 - b. Approved application from the City of Canton for the operation of MFU;
 - c. Current health inspection report (a copy must be maintained on mobile unit at all times);
 - d. Signed, notarized letter of authorization from Commissary if not owned by mobile unit operator;
 - e. Valid Certified Food Manager certification for at least one individual operating on the unit;
 - f. Food handler cards for all other persons handling food;
 - g. CPF's current health inspection report (a copy must be maintained on the mobile unit at all times); and
 - h. A copy of a valid identification for the operator of the MFU.
3. The City may require a MFU vendor to come, on an annual basis, to a location designated by the health authority for an inspection.

III. Types of MFUs

A. LIMITED SERVICE MOBILE FOOD UNIT:

1. Ice Cream Trucks – approved to vend pre-wrapped and sealed ice cream, canned soft drinks, packaged candy, chips and pickles
2. Mobile catering trucks – approved to deliver prepared food to a catered operation
3. Limited Service Pushcarts – approved to vend foods that are pre-wrapped, bottled or otherwise packaged

4. Mobile Grocery Truck – approved to vend pre-wrapped, non-potentially hazardous food including canned soft drinks, prepackaged grocery items, candy, chips and pickles
 - a. All items sold must be purchased from a permitted facility.
 - b. Permits must be retained on the MFU at all times and are not transferable.
 - c. Only single service articles are to be used.
 - d. Ice Cream Trucks
 - (1) Ice Cream Trucks may stop on public streets or rights-of-way provided such stops:
 - (a) Are not in or within fifty (50) feet of an intersection;
 - (b) Are not in an area which prohibits standing or parking of vehicles;
 - (c) All items are vended from the curbside or rear of the vehicle; and
 - (d) The ice cream truck is vending in a safe manner.
 - e. Push Carts
 - (1) Vehicle Design and Equipment Requirements:

B. FULL SERVICE MOBILE FOOD UNIT:

1. **Mobile Food Unit (Full Service):** a food service establishment that stores, prepares, displays, serves, sells, or distributes any food or beverage from a mobile food preparation unit that is not operating at a permanent fixed location. A mobile food service establishment is vehicle-mounted or wheeled and capable of being **readily moveable**. A mobile food unit is fully self-contained.

IV. Health & Safety Regulations

All MFU's must follow the guidelines set out in the most current version of the Texas Food Establishment Rules pertaining to Mobile Food Units issued by the Texas Department of State Health Services.