

## ORDINANCE NO. 22-N

**AN ORDINANCE OF THE CITY OF ALVIN, TEXAS, AMENDING CHAPTER 10, FOOD AND FOOD ESTABLISHMENTS, OF THE CODE OF ORDINANCES OF THE CITY OF ALVIN, TEXAS, FOR THE PURPOSE OF AMENDING ARTICLE I. IN GENERAL, ARTICLE II. PERMIT, ARTICLE III. INSPECTIONS, ARTICLE IV. CONSTRUCTION, REMODELING AND CONVERSION BY ADDING SECTION 10-33 REGULATIONS, AND AMENDING ARTICLE V. MOBILE FOOD UNITS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; AND SETTING FORTH OTHER PROVISIONS RELATED THERETO.**

**WHEREAS**, the City Council of the City of Alvin is continually reviewing the provisions of the City Code of Ordinances to ensure that it meets the current needs of the City and that the procedures herein reflect standard practice; and

**WHEREAS**, the City Council of the City of Alvin desires to promote the health, safety, and general welfare of its citizens;

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

**Section 1.** That Chapter 10, Food and Food Establishments, of the Code of Ordinances, City of Alvin, Texas, is hereby amended with the language as follows:

### **CHAPTER 10, FOOD AND FOOD ESTABLISHMENTS**

#### **ARTICLE I. IN GENERAL**

##### **Sec. 10-1. State regulations adopted.**

The Texas Food Establishment Rule has been repealed and has been replaced with the 25 Texas Administrative Code (TAC), Chapter 228 Subchapters A—J. The effective date for this repeal was August 8, 2021. From and after enactment of this chapter, the 25 Texas Administrative Code, Chapter 228 shall govern the regulation of food and food establishments in the City of Alvin in addition to any other requirements set forth in this chapter and other applicable laws and regulations. A copy of the 25 Texas Administrative Code, Chapter 228 shall be on file in the office of the City Secretary.

## Sec. 10-2. Definitions.

For purposes of this chapter, the words, terms and phrases set forth in the 25 Texas Administrative Code, Chapter 228 as definitions shall have the meanings set forth therein. Additionally, the following words, terms and phrases shall have the meanings set forth below except where the context clearly indicates a different meaning:

*Authorized agent or employee* means an employee(s) of the City of Alvin.

*Food establishment* means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption as follows:

- (a) A restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, ending location, (machine), self-service food market, conveyance used to transport people, institution, or food bank;
- (b) An establishment that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout order, or delivery service that is provided by common carriers; and
- (c) Includes an element of the operation such as a transportation vehicle or 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 and an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on- or off-premises; and regardless of whether there is a charge for the food.
- (d) Food establishment does not include an establishment that offers only prepackaged foods that are not time/temperature controlled for safety food, a produce stand that only offers whole, uncut fresh fruits and vegetables, a food processing plant, a cottage food industry, an area where cottage food is prepared, sold or offered for human consumption, a bed and breakfast limited facility as defined in the 25 Texas Administrative Code, Chapter 228, or a private home that receives catered or home-delivered food.

*Inspection report card* contains the letter grade that is assigned by the health official, based on the total inspection score at the completion of the inspection of a food establishment.

*Inspection report form* complete report of a food establishment or mobile food unit inspection. This form shall reference, by section number, the section violated and shall state the correction to be made.

*Temporary food establishment* means a food establishment that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration. This may include a stand or a booth.

*Mobile food unit (MFU)* means a vehicle mounted, self or otherwise propelled, self-contained food service operation, designed to be readily movable (including, but not limited to catering trucks, trailers, push carts, and roadside vendors) and used to store, prepare, display, serve or sell food. Mobile units must completely retain their mobility at all times. A mobile food unit does not include a stand or a booth. a roadside food vendor is classified as a MFU.

*Mobile food unit—additional permit to an existing food establishment* means a mobile food unit operated by an existing permitted food establishment as an additional source of food service.

*Non-profit organization* means an incorporated organization which exists for educational or charitable reasons, and from which its shareholders or trustees do not benefit financially. Non-profit status must be verified by submission of supporting documentation, such as an IRS form 501c.

*Person in charge (PIC)* means the individual present at a food establishment who is responsible for the operation at the time of inspection.

*Regulatory authority* means the City of Alvin, Texas.

*Texas Food Establishment Rules (“TFER”)* means the rules promulgated by the Texas Department of State Health Services with an effective date of October 11, 2015, and set forth in 25 Texas Administrative Code, Chapter 228, Subchapters A—J, and as such rules may be hereafter amended.

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## ARTICLE II. PERMIT

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### **Sec. 10-14. Suspension.**

The city may suspend any permit to operate a food establishment, temporary food establishment, and/or mobile food unit, if the permit holder does not comply with the requirements of this chapter and the violation creates an immediate threat to the health and safety of the public. Suspension is effective upon written notice, and service operations shall immediately cease. Whenever a permit is suspended, the city shall notify the permit holder or the person in charge of the food establishment in writing of the reason(s) for which the permit is suspended and inform them of the opportunity for a hearing before the City Manager. If the permit holder requests a hearing, they shall file their written request for a hearing with the City Secretary within ten (10) days following service of such notice of suspension. If a request for hearing is filed, a hearing shall be scheduled within ten (10) days of the city’s receipt of such request. If no request for hearing is filed within the ten-day period, the suspension of the permit is sustained. The city’s health official/code compliance officer may end the suspension at any time if reasons for suspension no longer exist.

### **Sec. 10-15. Revocation.**

The city may revoke a permit for serious or repeated violation(s) of any of the requirements of this chapter or for interference with the health official/code compliance officer in the performance of his/her duties. Prior to revocation, the city shall notify the permit holder or the person in charge of the food establishment in writing of the reason(s) for which the permit is subject to revocation and inform them of the opportunity for a hearing before the City Manager. If the permit holder requests a hearing, they shall file their written request for a hearing with the City Secretary within ten (10) days following service of such notice of revocation. If a request for hearing is filed, a hearing shall be scheduled within thirty (30) days of the city’s receipt of such request. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.

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**Sec. 10-18. Appeals.**

Any person aggrieved by a decision of the city manager made under this article may appeal such decision to the City Council by filing written notice of such appeal with the City Secretary within ten (10) days of the date of the City Manager’s written report/decision. The City Council shall conduct a hearing de novo and its decision shall be final and binding.

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**ARTICLE III. INSPECTIONS**

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**Sec. 10-22. Reports.**

When an inspection of a food establishment is conducted, the findings shall be recorded on an inspection report form, and a copy of each inspection report form with number score and corresponding letter grade shall be provided to the food service manager or other person in charge (PIC) of the establishment. Upon conclusion of the inspection, the city’s health official shall post the retail food establishment inspection report card on the main public entrance of the establishment showing the number score and corresponding letter grade. The inspection report card shall not be defaced or removed by any person except the city’s health official. Any person, firm, or corporation who removes the inspection report card will be deemed guilty of a misdemeanor and shall, upon conviction by a court of competent jurisdiction, be assessed fines as provided by this Code.

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**Secs. 10-24—10-29. Reserved.**

**ARTICLE IV. CONSTRUCTION, REMODELING AND CONVERSION**

**Sec. 10-30. Plans.**

Two (2) sets of properly prepared plans and specifications for each construction, remodeling or alteration of a food establishment shall be submitted to the engineering department prior to any on-site construction. The plans must be drawn to scale no smaller than one-eighth inch and shall consist of a plot plan, floor plan, foundation plan, structural plan, plumbing plan, elevation plan, wall section, engineer’s scale and survey (if required by applicable law), mechanical and electrical details, and health equipment detail with elevations.

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**Sec. 10-33 Regulations.**

The following regulations shall apply to construction, remodeling, and conversion of all food establishments.

- (1) Manual cleaning and sanitizing. A three-compartment sink, large enough to fully submerge the largest utensil, of the minimum size of fifteen (15) inches long by fifteen (15) inches wide by fourteen (14) inches deep shall be provided, and each compartment shall be equipped with an integral heating device or chemical sanitizer, drain boards and an approved basket. A separate preparation sink must be provided, and its only purpose will be used in preparing foods only.

- (2) Grease Trap. The grease trap shall be located outside the building and shall comply with the plumbing code. In no event shall the grease trap have a capacity less than seven hundred fifty (750) gallons.
- (3) Mop sink cannot be located inside the establishment where food is stored, prepared, or served.
- (4) Automatic paper towel dispensers are required in bathrooms, food preparation areas, and food cook areas.

**Secs. 10-10-34. Reserved.**

**ARTICLE V. MOBILE FOOD UNITS**

**Sec. 10-35. In general.**

- (1) In addition to other requirements set forth in this chapter and applicable state law, a mobile food unit shall be subject to and shall comply with the provisions set forth in this article. The city's health official and/or code compliance officer, may impose additional requirements to protect against health hazards related to the conduct of the food service establishment as a mobile operation and may prohibit the sale of some or all potentially hazardous foods.
- (2) Failure to comply with these requirements shall prohibit the mobile food unit from obtaining the needed permits to operate

**Sec. 10-36. Mobile food unit regulations.**

The following additional regulations shall apply to mobile food units:

- (1) *Plan submission.* Plans must be submitted to the engineering department at the time of permit application prior to operation of a mobile food unit. Plans shall show the signage, layout, arrangement of equipment, and construction material of the inside of the mobile food unit including food preparation, storage and service window areas.
- (2) A mobile food unit shall obtain a Property Agreement Letter from the property owner to operate on the property owner's premises. A copy of the Property Agreement Letter must be provided to the city with the permit application. The operator of a mobile food unit shall notify the engineering department each time the mobile food unit changes location of operation no later than twenty-four (24) hours after the change has taken place and provide another Property Agreement Letter to operate at such location. A mobile food unit cannot set up within twenty-five (25) feet of the roadway or the public easement.
- (3) *Identification of mobile food units.* Every mobile food unit must be readily identifiable by the business name which must be printed, permanently affixed and prominently displayed upon at least two (2) sides of such units in letters not less than three (3) inches in height.

Additionally, the following identification requirements are for mobile food units used for the purpose of selling or dispensing frozen desserts, prepackaged food and beverages from a moving truck:

- a. A sign clearly visible from both the front and the rear, mounted on the top of the truck, must bear the warning sign “CAUTION - CHILDREN”. The lettering for such sign shall be in block style letters and not less than six (6) inches in height and one-half inch wide, and letters shall be black against a yellow background.
  - b. Flasher-type warning lights displaying yellow to the front and red to the rear and which operate continuously while the truck is stopped for the purpose of making a sale shall be installed at each end of the “CAUTION - CHILDREN” sign.
- (4) *Sanitation requirements.* The following additional sanitation requirements shall apply:
- a. Any accident involving a mobile food unit shall be reported in writing, to the engineering department within twenty-four (24) hours from the time the accident occurred, and before operation of mobile food unit resumes if such accident results in damage to the water system, waste retention tank, food service equipment, or any facility which may result in the contamination of the food being carried. Such report shall be made by the holder of the mobile food unit permit.
  - b. In the event that the permit issued under this chapter to any food establishment that has agreed to be a central preparation facility for a mobile food unit has been revoked, suspended, or without timely renewal, the permit for the same mobile food unit shall be automatically suspended until and unless the permit for the food establishment is restored to valid status.
  - c. In accordance with Chapter 228 of the Texas Administrative Code, mobile food units must be “readily moveable,” meaning the unit must not be modified in any manner that would prevent or otherwise reduce ready mobility.
  - d. All LPG cylinders shall be securely mounted on the outside of the mobile food unit or placed in a gastight compartment that prevents vapors from entering the passenger/work area. In accordance with the Section 3198.1 of the 2018 International Fire Code, the minimum aggregate capacity of LPG containers used to fuel cooking appliances shall not exceed 200 pounds propane capacity.

**Section 2.** That except as amended herein all other provisions of Chapter 10 of the Code of Ordinances, City of Alvin, Texas, shall remain in full force and effect. To the extent of any conflict or inconsistency between the provisions of this Ordinance and any other ordinance, the provisions of this Ordinance shall control.

**Section 3. Penalties.** Any person, firm, entity or corporation violating any provision of this Ordinance, as it exists or may be amended, shall be guilty of a misdemeanor, and on conviction, shall be fined in an amount not to exceed \$2,000. Each continuing day’s violation shall constitute a separate offence. The City of Alvin retains all legal rights and remedies available to it pursuant to local, state and federal law.

**Section 4. Severability.** Should any section or part of this Ordinance be held unconstitutional, illegal, invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or

ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

**Section 5. Incorporation into Code of Ordinances.** The provisions of this ordinance shall be included and incorporated in the Code of Ordinances, City of Alvin, Texas, as an addition, amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

**Section 6. Effective Date.** This Ordinance shall take effect immediately from and after its passage in accordance with the provisions of Chapter 52 of the Texas Local Government Code and the City of Alvin Charter.

**Section 7. Open Meetings Act.** It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and the public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the *Texas Government Code*. Notice was also provided as required by Chapter 52 of the *Texas Local Government Code* and the *City of Alvin Charter*.

**Section 8. Publication.** The City Secretary of the City of Alvin is hereby directed to publish this Ordinance, or its caption and penalty clause, in one issue of the official City newspaper as required by the City of Alvin Charter.

**PASSED and APPROVED** on the 17<sup>th</sup> day of March 2022.

**THE CITY OF ALVIN, TEXAS**

**ATTEST**

By: \_\_\_\_\_  
Paul A. Horn, Mayor

By: \_\_\_\_\_  
Dixie Roberts, City Secretary