

**ORDINANCE NO. 19-M**

**AN ORDINANCE OF THE CITY OF ALVIN, TEXAS, AMENDING CHAPTER 10, FOOD AND FOOD ESTABLISHMENTS, OF THE CODE OF ORDINANCES, CITY OF ALVIN, TEXAS, AMENDING THE FOOD ESTABLISHMENT INSPECTION REPORT POSTING REQUIREMENT; PROVIDING FOR A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; AND SETTING FORTH OTHER PROVISIONS RELATED THERETO.**

**WHEREAS**, the Alvin City Council finds that food and food establishment regulations should be amended periodically to protect the best interest of the health, safety, and welfare of the citizens of Alvin, Texas, and

**WHEREAS**, the Alvin City Council also wishes to further define the food establishment inspection report posting requirement to provide important information to the public.

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

**Section 1.** That certain sections of Chapter 10; Food And Food Establishments, of the Code of Ordinances, City of Alvin, Texas; are hereby amended, which said sections shall read as follows:

**Chapter 10. FOOD AND FOOD ESTABLISHMENTS**

**ARTICLE I. IN GENERAL**

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

The City of Alvin adopts by reference the most current version of the Texas Food Establishment 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. The Texas Food Establishment Rules shall be considered incorporated herein by reference for all purposes. From and after enactment of this chapter, the Texas Food Establishment Rules 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. Any subsequent revisions or changes to the Texas Food Establishment Rules shall automatically become a part of this chapter unless council action is required by law. A copy of the Texas Food Establishment Rules shall be on file in the office of the city clerk.

**Sec. 10-2. Definitions.**

For purposes of this chapter, the words, terms and phrases set forth in the Texas Food Establishment Rules 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 TFER, or a private home that receives catered or home-delivered food.

*Inspection Report Card*- contains the letter grade that is assigned by the Health Officer, 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* is 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)*- 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.

**Sec. 10-3. Application of chapter.**

(a) This chapter shall apply to all areas within the corporate limits of the city.

(c) Persons or organizations whose food services are regulated and regularly inspected by another federal or state governmental entity are required to comply with this chapter.

**Sec. 10-4. Enforcement.**

This chapter shall be enforced by the city's Engineering Department.

**Sec. 10-5. Penalty.**

Any person who violates any provision of this chapter shall be guilty of a misdemeanor which shall be punishable by a fine not to exceed two thousand dollars (\$2,000.00). Each day of violation of this chapter shall constitute a separate offense. Prosecution in municipal court shall be in addition to other remedies provided in this chapter, by law, or in equity.

**Sec. 10-6. Injunction.**

(a) If it appears that a person has violated, is violating, or threatens to violate this chapter, the city may institute a civil suit in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation.

(b) The city may petition a district court for a temporary restraining order to immediately halt a violation or other action creating an emergency condition if it appears that:

(1) A person is violating or threatening to violate this chapter; and

- (2) The violation or threatened violation creates an immediate threat to the health and safety of the public.

**Secs. 10-7 - 10-9. Reserved.**

**ARTICLE II. PERMIT**

**Sec. 10-10. Required.**

A food establishment, temporary food establishment, mobile food unit, child care center or group residence that provides food service shall only be operated with a valid permit issued by the city. Permits are not transferable from place to place or person to person. A valid permit shall be posted in public view in every establishment. Each and every food establishment, whether under one roof or not, shall be considered a separate establishment, and a permit must be obtained for each establishment. Each such establishment is subject to the requirements in this chapter.

**Sec. 10-11. Duration.**

Permits shall be issued annually and shall extend from the date of issuance or renewal, as applicable. Annual renewal applications must be submitted at least thirty (30) days prior to the expiration date of the permit. A permit shall be issued only if the establishment is in complete compliance with this chapter.

A Mobile Food Unit (commonly known as a ‘food truck’) that operates for a period of no more than three (3) consecutive days in conjunction with a single event or celebration may obtain a Temporary Food Establishment permit.

**Sec. 10-12. Fees.**

(a) Before any permit shall be issued under this chapter, the applicant shall pay the applicable fees set forth in chapter 28 of this Code.

(b) The re-inspection fee set forth in chapter 28 of this Code shall apply in cases where reinspection is deemed necessary by the City's health official/code compliance officer.

(c) Non-profit organization as defined by this article is required to submit an application for a permit, and upon submission of supporting documentation of nonprofit status, the organization will be issued a permit, but all fees associated with this permit shall be waived.

**Sec. 10-13. Refunds/proration.**

Permit fees are not refundable and shall not be prorated.

**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 clerk 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 (10) 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 clerk 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 (10) day period, the revocation of the permit becomes final.

**Sec. 10-16. Service of notice.**

A notice provided for in this article is properly served when it is delivered to the permit holder or the person in charge of the establishment or when it is sent by registered or certified mail, return receipt requested, to the last known address of the permit holder or when it is delivered by the city in person to the last known address of the permit holder.

**Sec. 10-17. Hearings.**

The hearings provided for in this article shall be conducted by the City Manager. Based upon the recorded evidence of such hearing, the City Manager shall make a final finding and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder, and a copy shall be filed with the city clerk.

**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 clerk 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.

**Sec. 10-19. Application for a new permit after revocation.**

The permit holder that has been revoked must wait 180 days after the final date of the revocation decision before making written application for a new permit.

**ARTICLE III. INSPECTIONS**

**Sec. 10-20. Frequency.**

Inspections shall be performed as often as necessary to enforce this chapter.

**Sec. 10-21. Access.**

The authorized agent of the regulatory authority, after proper identification, shall be permitted to enter any food establishment, mobile food unit or establishment for which a permit has been issued at any reasonable time for the purpose of making inspections to determine compliance with this chapter. The employees/agents shall be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received or used or to persons employed by the establishment.

**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 Officer 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 Officer. 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.

**Sec. 10-23. Correction of violations.**

The inspection form shall specify a reasonable period of time to correct the violations and such violations must be corrected within the specified period; provided, however that (i) if an imminent health hazard exists the establishment, including a mobile food unit, shall immediately cease food service operations and operations shall not be resumed until authorized by the city;; and (ii) all violations at temporary food establishments shall result in cessation of temporary food service operations. The establishment or mobile food unit shall not resume operations until such time as a reinspection determines that the condition(s) responsible for the requirement to cease

operations no longer exists. The city shall offer to reinspect the establishment within a reasonable time.

**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 Code Compliance Department prior to any on-site construction. The plans must be drawn to scale no smaller than one-eighth (1/8) 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.

**Sec. 10-31. Other code requirements.**

A building permit shall be required for construction, alteration, remodeling or conversion of a food establishment in accordance with the International Building Code adopted by the city. Any construction, alteration, remodeling, or conversion of a food establishment shall comply with all applicable federal and state laws and codes and regulations of the city. To the extent of a conflict between or among the provisions of this chapter and other codes or ordinances of the city, the more restrictive provision shall control.

**Sec. 10-32. Ownership of food establishment.**

(a) Often, when an existing food establishment is purchased, the purchase does not include the property or the structure, but includes the rental or lease of space and equipment. The city requires that the person who operates a food establishment obtain a valid food dealer's permit. The person who applies for the food dealer's permit is considered, legally, to be the owner.

(b) The person who is registered on the food dealer's permit is the responsible party for the property, premises, structure and complete operating services. The operator of the food establishment is the ultimate responsible party, and the conditions under which the food establishment was leased or rented does not release the operator from the requirements of this article.

(c) A new owner may continue to operate a food establishment without interruption from the city when the establishment is in complete compliance with this chapter. Total compliance is the basis for issuing the food dealer's permit, which must be obtained prior to opening the establishment for business. An inspection of the premises and operations can demonstrate the extent to which the food establishment is in compliance. Upon normal conditions, depending on the condition of the food establishment, many violations can be corrected within such a short period of time that an interruption of food services is unnecessary and not required.

(d) Depending on the wear and tear (depreciation) on the establishment, the building and equipment may already be close to compliance, and it is the responsibility of the new owner to schedule an inspection from the city to determine what is required to meet current codes.

**Sec. 10-33 -10 - 34 Reserved.**

## **ARTICLE V. - MOBILE FOOD UNITS**

**Sec. 10-35. In General.**

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.

**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 Code Compliance 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) *Fixed location.* A mobile food unit operating from a fixed location shall obtain written permission from the property owner to operate on the property owner's premise. A copy of such letter must be provided to the city with the permit application. The operator of a fixed location mobile food unit shall notify the code compliance 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 written permission to operate at such location. A mobile food unit operating from a fixed location 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 Code Compliance 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.

**Section 3. Savings Clause.** 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 4. Severability.** Should any section or part of this ordinance be held unconstitutional, illegal, or 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. Penalty.** Any person who violates or causes, allows, or permits another to violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine in accordance with the general penalty section 1-5 of the Code of Ordinances. Each occurrence of any such violation of this Ordinance shall constitute a separate offense. Each day on which any such violation of this Ordinance occurs shall constitute a separate offense.

**Section 6. Publication.** The City Clerk 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 Charter of the City of Alvin, Texas and Chapter 52 of the Texas Local Government Code.

**Section 7. Effective Date.** This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of Chapter 52 of the Texas Local Government Code and the City of Alvin Charter.

**Section 8. Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and that 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.

**PASSED AND APPROVED** on first and final reading on the 6<sup>th</sup> day of June 2019.

**CITY OF ALVIN, TEXAS**

By:   
Paul A. Horn, Mayor

**ATTEST**

By:   
Dixie Roberts, City Secretary