

**ORDINANCE # 041723**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POTH, TEXAS, ESTABLISHING RULES AND REGULATIONS REGARDING MOBILE FOOD VENDING UNITS AND OTHER MATTERS IN CONNECTION THEREWITH; REPEALING ALL ORDINANCES TO THE EXTENT THEY ARE IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY CLAUSE AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Poth ("City") is a Texas General Law Municipality operating under the laws of the State of Texas; and

**WHEREAS**, the City is empowered, through its City Council, to adopt, publish, amend, or repeal an ordinance, rule, or police regulation that is for the good government, peace, or order of the municipality or for the trade and commerce of the municipality; and is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality

**WHEREAS**, the City Council recognizes the general community, regional, and national interests in mobile food vending, and finds that such activity not only provides citizens with an innovative way to expand and diversify the economy while creating jobs, but also enhances the quality of life for City residents and visitors; and

**WHEREAS**, the City Council finds that amending the City code of ordinances to provide governance, guidance, and support for mobile food vending, is necessary for the orderly development of this community, represents the best interest of all citizens of the City, and promotes the public aesthetics, health, safety, general welfare, and convenience; and

**WHEREAS**, the City has complied with all conditions precedent necessary to take this action, has properly noticed and conducted all public meetings pursuant to the Texas Local Government Code and Texas Government Code, as applicable.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POTH THAT:**

**Section 1.** The foregoing recitals are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes and findings of fact.

**Section 2.** The rules and regulations for mobile food vending units are hereby established as set forth on Exhibit A attached hereto.

**Section 3.** If any provision of this Ordinance is illegal, invalid, or unenforceable under present or future laws, the remainder of this Ordinance will not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid, and enforceable will be added to this Ordinance.

**Section 4.** This Ordinance shall be cumulative of all provisions of ordinances of the City except where the provisions of the Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

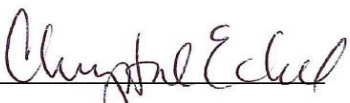
**Section 5.** This Ordinance shall be construed and enforced in accordance with the laws of the state of Texas and the United States of America.

**Section 6.** It is officially found, determined, and declared that the meeting at which this Ordinance is adopted 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 Texas Open Meetings Act, Chapter 551, Texas Government Code, as amended.

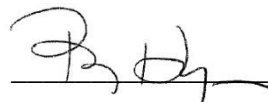
**Section 7.** This Ordinance shall become effective and shall be in full force and effect on and after its date of passage, approval and adoption or publication as required by law.

Passed and approved on this the \_\_\_\_17<sup>th</sup>\_\_\_\_ day of \_\_\_\_April\_\_\_\_, 2023

Approved:

  
\_\_\_\_\_  
Mayor— Chrystal Eckel

Attested:

  
\_\_\_\_\_  
City Secretary – Rose Huizar

## **Exhibit A**

### **Rules and Regulations for Mobile Food Vending Units**

#### **Section 1. Definitions**

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

**Accessory Mobile Food Vending (AMFV)**– A Mobile Food Vendor operating as an accessory use to a primary use established and operating with a valid certificate of occupancy on the property

**Certified Food Manager** - A person who has demonstrated that he or she has the knowledge, skills and abilities required to protect the public from foodborne illness by means of successfully completing a certified food manager examination and becoming certified as described in Chapter 438 of the Texas Health and Safety Code and Title 25 Texas Administrative Code Chapter 229, as may be amended.

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

**Mobile food vendors (MFV)** - Any business which sells edible goods from a Mobile Food Unit (MFU) within the city.

**Mobile Food Vending Court (MFVC)** - Any parcel of land where one or more Mobile Food Vendors congregate to offer food or beverages for sale to the public. This is considered a primary land use for the property.

**Owner** - As used herein, and for the purpose of obtaining permits or receiving citations, includes any persons or persons with apparent care, custody, or control of the MFU or property upon which it is located.

#### **Section 2. Documentation, permits and inspections**

1. Required documentation. To obtain a MFV permit, a MFV must submit a list of foods and beverages to be served on the unit, stating the source of the item and when and where it will be prepared.
2. If located on private land, vendor shall submit current copy of rental/lease agreement
3. Permit. It shall be unlawful for any person to operate a mobile food unit without having obtained a permit issued by the city. Permits are not transferrable from one establishment to another or from one person to another. Permits shall be valid for 1 calendar year January thru December. Permits must be posted in or on every mobile food vending unit in a conspicuous place.

- a. Mobile food vendors must submit a copy of a valid mobile food health permit from another municipal, county, or State of Texas health inspection agency.
- b. Mobile food vendors must submit a copy of a fire safety inspection from another municipal, county, or State of Texas health and fire inspection agency.
- c. To operate in the city, the mobile food vendor must have a current mobile food vending permit, have a current mobile food health permit and pass a fire safety inspection.
4. Inspections. Mobile food units may be inspected at any time by the code enforcement officer, fire marshal, or county health authority.

### **Section 3. Locations permitted and duration**

1. Private property zoned for MFV. A MFV may only be locate on property zoned for Mobile Food Vending Court or Accessory Mobile Food Vending as set forth in the Zoning Ordinance.
2. No public streets. A MFV is prohibited from operating on a public street or within the public right of way
3. Special event exception.
  - a. A MFV permit may be issued by the mayor or his/her designee for temporarily locating within the public right of way, within a public park or facility, or when such issuance is in conjunction with a special event of limited duration.
  - b. The applicant for a temporary/ special event permit shall submit a permit application to the mayor or his/her designee complete with information as may be required by the mayor or his/her designee to ensure compliance with this ordinance.
  - c. Duration. A MFU associated with a special event shall not remain in the same location for more than seventy-two (72) consecutive hours.

### **Section 4. Certified Food Manager required.**

A Certified Food Manager must be present at the Mobile Food Unit during each day of operation. A Certified Food Manager is not required for a Mobile Food Unit which is only selling prepackaged food and beverages.

### **Section 5. Adoption of Texas Food and Beverage Establishment Rules.**

All Accessory Mobile Food Vendors are subject to the state law provisions applicable to Mobile Food Units and as provided in Title 25 Texas Administrative Code Chapter 228 and Texas Health and Safety Code Chapter 437, as both may be amended. In the event of a conflict between this ordinance and state law, state law shall govern.

### **Section 6. Vehicle or unit requirements.**

1. All Mobile Food Units shall be readily identifiable by business name, printed in bold letters not less than 3 inches in height, not less than one and one-half inches in width, permanently affixed, and prominently displayed upon at least 2 sides of the unit.
2. All Mobile Food Units shall maintain a current state motor vehicle inspection sticker and a current state motor vehicle license plate registration sticker.
3. All Mobile Food Units must be readily movable (capable of moving immediately upon the request of the mayor or his/her designee).

### **Section 7. Trash and other facilities**

1. Restroom access and trash receptacles. All MFVs shall:
  - a. Provide one or more trash receptacles for disposal of waste from customers, and shall provide for the disposal of such waste; and
  - b. Provide access to restroom facilities for customers and employees within 300 feet of the Mobile Food Unit if located in a Mobile Food Vending Court. If the restroom facilities being provided are located within another establishment, the Mobile Food Vendor shall provide evidence that permission from the restroom owner has been granted and the Mobile Food Vendor's hours of operation shall be restricted to only those times in which restrooms are available. Portable restroom facilities may be permitted only for special events and is at the discretion of the mayor or his/her designee.
2. Parking access. All MFVs shall:
  - a. Provide 2 off street parking spaces for customers
3. Drive-Through Service. Vehicular drive-through service of food and/or beverages shall not be permitted except through a Specific Use Permit granted by the city council.

#### **Section 8. Fees**

1. Mobile Food Vendor Permit.
  - a. Registration Fee (per year): \$300.00
2. Temporary/ Special Event Fee: \$ 25.00
  - a. Mobile Food Vendors participating in a Temporary/Special Event must have a valid Mobile Food Vendor Permit issued by the city.

#### **Section 9. Penalty**

Any person, firm, corporation or agent who shall violate a provision of this ordinance, or fail to comply therewith, or with any other requirements thereof, shall be guilty of a Class C misdemeanor. Such person shall be considered guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this ordinance is committed or continued, and upon conviction of any such violation, such person shall be punished by a fine not to exceed \$2,000.00. In addition, any violation of this ordinance may result in immediate revocation of any MFV permit. Any citation may be issued to either the operator of the MFV or the owner of the property upon which the MFV is located in violation of this ordinance.