

**ORDINANCE NUMBER 23-11-1339**

**AN ORDINANCE OF THE CITY OF MURPHY, COLLIN COUNTY, TEXAS AMENDING CHAPTER 10 "HEALTH AND SANITATION, " ARTICLE 10.06 "FOOD ESTABLISHMENTS, " TO AMEND FOOD ESTABLISHMENT REQUIREMENTS INCLUDING ADOPTING THE TEXAS FOOD ESTABLISHMENT RULES (TFER) EXCEPT AS AMENDED AND MODIFIED HEREIN; PROVIDING FOR INCORPORATION OF PREMISES; PROVIDING AMENDMENTS; PROVIDING FOR A PENALTY NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000) PER DAY FOR EACH OFFENSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A CUMULATIVE/REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Murphy is a Home Rule Municipality acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution; and

**WHEREAS**, the City Council of the City of Murphy, in compliance with the laws of the State of Texas, has given the requisite notices by publication and otherwise and held a public meeting for citizens generally and to all persons interested, and the City Council of the City of Murphy in exercise of its legislative discretion concluded that it was in the best interest of the health, safety, and welfare of the citizens of the City of Murphy to make the following amendments to Chapter 10, Health and Sanitation, of the City of Murphy Code of Ordinances as follows regarding the regulation of Food Establishments in accordance with the Texas Food Establishment Rules (TFER), except as amended and modified herein;

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

**Section 1. Incorporation of Premises.** That all of the above recitals are found to be true and correct and are incorporated into the body of this Ordinance as if fully set forth herein.

**Section 2. Amendment.** Chapter 10 "Health and Sanitation", Article 10.06 "Food Establishments" is hereby amended and shall read in its entirety as follows:

**Chapter 26. Health and Sanitation  
Article 10.06 Food Establishments**

**Division 1 Generally**

**Sec. 10.06.001 Adoption of the Texas Food Establishment Rules.**

(a) Adopted. The Texas Food Establishment Rules (TFER) codified at Texas Administrative Code Title 25 Chapter 228 adopted by the Texas Department of State Health

Services, effective August 8, 2021, as amended from time to time are hereby adopted as the minimum standards for food service operations with the corporate limits of the city, and shall constitute the regulations governing the preparation, service, and sale of food within the city, except as amended and modified in this Article.

(b) The city manager, or authorized representative, is hereby authorized and directed to enforce all provisions of the food establishment rules.

#### **Sec. 10.06.002 Definitions.**

*Base of operation.* An operating base location to which a mobile food establishment transportation vehicle returns as needed for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

*Commissary.* A catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged or stored.

*Employee.* The permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

*Failing score.* When an establishment receives an accumulation of critical and noncritical violations resulting in a rating below standards.

*Food establishment.* An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption, such as a restaurant, retail food store, satellite or catered feeding location, catering operation, market, or remote catered operations, as further defined by the Texas Food Establishment Rules.

*Food Truck Park.* A parcel of land where three or more mobile food units congregate to offer food or beverages for sale to the public as the principal use of the land.

*Food Truck Site.* An existing, developed site where a mobile food unit operates as an accessory use to the primary active business located on the same site.

*Mobile food unit.* A truck or trailer that sells food and/or beverages that are either prepackaged or prepared in the confines of a portable truck/trailer, which can be moved from place to place, but is typically in a fixed location for extended periods of time. Mobile food trucks do not include restaurant delivery and catering vehicles.

*Permit.* The document issued by the regulatory authority that authorizes a person to operate a food-establishment.

*Person in charge.* The individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee present is the person in charge.

*Regulatory authority.* The city manager or his designated representative.

*Seasonal food establishment.* A food service establishment that operates at a fixed location for a period greater than 14 consecutive days, but less than 60 consecutive days, in conjunction with a single event or celebration.

*Temporary food establishment.* A food establishment that operates for a period of no more

than 14 consecutive days in conjunction with a single event or celebration.

**Section 10.06.003 through 10.03.030, (Reserved)**

**Division 2 Mobile Food Units**

**Sec. 10.06.031 General Provisions**

(a) Compliance with other requirements; additional requirements; waiver of requirements. Mobile food units shall comply with the requirements of this article, except as otherwise provided in this division and in subsection (b) of this section. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the food service establishment as a mobile operation, may prohibit the sale of some or all potentially hazardous food, and when no health hazard will result, may waive or modify requirements of this article relating to physical facilities, except those requirements in this article of subsections (d) and (e) of this section, section 10.06.032(a) and section 10.06.033(a) and (b).

(b) Restricted operations. Mobile food units that serve only food that is prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of the sections referenced in subsection (a) of this section, or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment, need not comply with requirements of this article pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its commissary.

(1) Pushcarts shall be limited to pre-packaged ice cream or pre-packaged non-potentially hazardous food as approved by the regulatory authority.

(2) Food prepared in a private home may not be used or offered for human consumption from a mobile unit. Food must comply with all labeling laws.

(c) Single-service articles. Mobile food units shall provide only single-service articles for use by the consumer.

(d) Water system. A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing and handwashing, in accordance with the requirements of this article. The water inlet shall be located in such a position that it will not be contaminated by waste discharge, road dust, oil or grease, and it shall be kept capped when not being filled. The water inlet shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of this article.

(e) Waste retention. If liquid waste results from operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank that is of at least 15 percent larger capacity than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All liquid waste shall be disposed of in compliance with all existing laws. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of different size and type than those used for supplying

potable water to the mobile food unit. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system.

(f) Vehicles.

- (1) Vehicle identification. Mobile food units shall identify the vehicle with characters three inches high on both exterior sides of the unit stating the name of the company.
- (2) Registration. Mobile food units must comply with all state and local laws pertaining to registration of the vehicle.

**Sec. 10.06.032 Commissary; Base of Operations.**

(a) Mobile food units shall operate from a commissary or other fixed food service establishment and shall report at least daily to such location for all supplies and for all cleaning and servicing operations. A letter from the commissary is required at the time of permit application and at each renewal of the permit.

(b) The commissary or other fixed food service establishment used as a base of operation for mobile food units shall be constructed and operated in compliance with the requirements of this article or by the approval of the regulatory authority.

**Sec. 10.06.033 Servicing Area of Operations.**

(a) Servicing area.

- (1) A mobile food unit servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning or servicing operation. Within this servicing area, there shall be a location provided for the flushing and drainage of liquid wastes separate from the location provided for water servicing and for the loading and unloading of food and related supplies. This servicing area will not be required where only packaged food is placed on the mobile food unit or where mobile food units do not contain waste retention tanks.
- (2) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt, and shall be maintained in good repair, kept clean, and be graded to drain.

(b) Servicing operations.

- (1) Potable water servicing equipment shall be installed according to law and shall be stored and handled in a way that protects the water and equipment from contamination.
- (2) The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged to a sanitary sewage disposal system.

**Sec. 10.06.034 Catering Services.**

(a) A person shall not engage in a catering service unless the service is affiliated with a food service establishment operating from a fixed facility that is permitted by the regulatory authority.

(b) A catering service shall comply with the requirements of the Texas Food Establishment Rules as the regulatory authority determines is necessary to protect public health

and safety.

**Sec. 10.06.035 Food Truck Site,**

(a) A person shall not engage in a catering Food truck sites may only be established within non-residential zoning districts.

(b) The operator of a mobile food unit may operate a food truck site upon receipt of an annual event vendor permit and health permit in accordance with the requirements of this code.

(c) No more than two mobile food units may be at the same site at any time, except for approved food truck parks.

(d) Mobile food units shall not locate on any private property without written permission to sell from the property owner. The letter shall state what business is allowed on the private property and be notarized with current contact information, signed by the property owner.

(1) Mobile food units must comply if asked to leave by the property owner or city official. A copy of the written permission to operate in a specific location, signed by the private property owner, must be kept within the mobile food unit at all times.

(e) Mobile food units shall be located on an improved surface (concrete or asphalt) on private property where an existing business is currently operating with a valid Certificate of Occupancy (CO). Operation within the public right-of-way is prohibited.

(f) Mobile food units must be parked, situated and operated in a manner that does not restrict orderly and/or safe vehicular and/or pedestrian movements.

(g) Mobile food units shall only operate between the hours of 7:00 AM and 10:00 PM, and shall be required to be removed from the property during non-operation hours (i.e. overnight storage on the site is prohibited).

(h) Mobile food units shall be equipped with trash receptacles approved by the city health inspector and that comply with all other applicable city codes. The outside storage of trash is prohibited.

(i) Permanent restrooms for employees shall be available within 500 feet of the unit. Portable restroom facilities are not permitted to meet this requirement.

(j) A minimum of two (2) dedicated parking spaces shall be required and shall not reduce the required parking for the existing building/land use.

(k) No lights associated with the operation of a mobile food unit may be directed towards an adjacent property or onto a public right-of-way.

(l) Loudspeakers or loud noises of any kind for the purpose of attracting attention to a mobile food establishment are prohibited.

(m) All signage must be attached to the mobile food unit with the exception of one freestanding menu board no greater than eight (8) square feet placed within ten feet of the unit on private property.

(n) Mobile food unit operators shall only engage in the sale and service of food and beverages. The sale of other products or services from a mobile food unit is prohibited, including but not limited to, tobacco products, alcoholic beverages, sexually explicit and/or drug related paraphernalia, obscene material, sales real estate and vacation packages,

marketing and advertising activities, sales of tickets for events, any nonfood vending, and other services or products not approved by the city prior to issuance of the permit.

**Sec. 10.06.036 Food Truck Park.**

Food truck parks shall only be located in non-residential zoning districts within the city and shall abide by all applicable development requirements of this Code for the respective zoning districts, and the following:

(a) A site plan shall be approved in accordance with Article 30.02, Division 7 prior to locating any mobile food unit on the property.

(b) Permanent restroom facilities available to owners, operators, and customers of the mobile food units operating in the food truck park must be located within 500 feet of each location where a mobile food unit may be parked.

(c) All vehicles, including mobile food unit, shall be parked on an improved surface, either concrete or asphalt.

(d) Electricity shall be provided with permanent outlets by way of a portable cord that complies with the National Electrical Code (NEC), as amended.

(e) Any waste, liquid or solid, shall be disposed of safely and properly as per all associated local and state regulations. Trash service and receptacles shall be provided in accordance with city requirements.

(f) A mobile food unit cannot be left unattended or left on site overnight.

**Sec. 10.06.037 through 10.03.060. (Reserved)**

**Division 3 Inspection and Enforcement**

**Sec. 10.06.061 Authority.**

The provisions of this article shall be enforced by agents of the regulatory authority who have the authority to issue citations to persons violating the provisions of this article. It shall be unlawful for any person to interfere with an agent of the regulatory authority in the performance of his duties as prescribed in this article.

**Sec. 10.06.062 Access.**

Agents of the regulatory authority, after proper identification, shall be permitted to enter any food service establishment at any reasonable time, for the purpose of making inspections to determine compliance with this article. The 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.

**Sec. 10.06.063 Report of Inspections.**

Whenever an inspection is made of a food service establishment, the findings shall be recorded on the inspection report form provided by the regulatory authority. The original of the inspection report form shall be furnished to the owner or person in charge at the completion of

the inspection and constitutes a written notice. The inspection report form shall summarize the requirements of this article. The completed form is a public document that shall be made available for public disclosure to any person who requests it according to law.

#### **Sec. 10.06.064 Correction of Violations.**

The inspection report form shall specify a reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

(a) If an imminent health hazard exists, such as complete lack of sanitization, refrigeration, or sewage backup into the establishment, the establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by the regulatory authority.

(b) All violations of critical items shall be corrected within a time specified by the regulatory authority, but in any event, not to exceed ten days.

(c) All noncritical items shall be corrected as soon as possible, but in any event by the time of the next routine inspection, but not to exceed 90 days.

(d) When the establishment receives a failing score, the establishment shall cease operations immediately. The establishment shall remain closed until reopened by the regulatory authority.

(e) In the case of temporary food service establishments, all violations shall be corrected immediately.

#### **Sec. 10.06.065 Examination and Condemnation of Food.**

(a) The regulatory authority may examine and collect samples of food as often as necessary for the enforcement of this article. The regulatory authority shall denature or destroy such food or bring it into compliance with the provisions of this article.

(b) The regulatory authority shall, upon written notice to the owner or person in charge specifying the reason, place under detention any food which it has probable cause to believe is adulterated or misbranded. Under a hold order, food shall be permitted to be suitably stored. It shall be unlawful for any person to remove or alter a hold order, notice or tag placed on food by the regulatory authority, and neither food nor the containers shall be relabeled, repacked, reprocessed, altered, disposed of or destroyed without the permission of the regulatory authority.

(c) After the owner or person in charge has been afforded a hearing as provided for in section 10.06.067 and on the basis of evidence produced at such hearing, or on the basis of examination in the event a written request is not received within ten days, the regulatory authority may cancel the hold order or may oversee the disposal of the food placed under the hold order or direct the owner or person in charge to bring it into compliance with the provisions of this article.

#### **Sec. 10.06.066 Procedure when Infection is Suspected.**

When the regulatory authority has reasonable cause to suspect the possibility of disease

transmission from any food service establishment employee, it may secure a morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The regulatory authority may require any or all of the following measures:

- (a) The immediate exclusion of the employee from all food service establishments;
- (b) The immediate closing of the food service establishment concerned until, in the opinion of the regulatory authority, no further danger of disease outbreak exists;
- (c) Restriction of the employee's services to some area of the establishment where there is no role in food preparation, storage, or service;
- (d) Adequate medical and laboratory examination of the employee, of other employees and of his and their body discharges; and
- (e) A medical release shall be required for excluded employee prior to returning to work.

**Sec. 10.06.067 Permit, Penalty.**

(a) Permit required; transferability. It shall be unlawful for any person to operate a food service or food processing establishment within the city ~~or its police jurisdiction~~ who does not possess a valid permit issued to him by the regulatory authority. Only a person who complies with the requirements of this article shall be entitled to receive and retain such a permit. Permits shall not be transferable from one person to another person or place. A valid permit shall be posted in every establishment. Permits for temporary establishments shall be issued for a period of time not to exceed 14 days. Seasonal permits may be issued for a period not to exceed 60 days.

(b) Review of plans. Whenever a food service or food processing establishment is constructed or extensively remodeled, and whenever an existing structure is converted to use as a food service operation, properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to the regulatory authority for review and approval before construction is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications if they meet the requirements of this article. No food service or food processing establishment shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the regulatory authority. A pre-operational inspection will be conducted in each food service establishment or food processing establishment prior to the start of operations to determine compliance with approved plans and with the requirements of this article.

(c) Application for permit. Any person desiring to operate a food service or food processing establishment shall make written application and pay the appropriate fee for a permit provided by the regulatory authority. Such application shall include the applicant's full name and post office address and whether such applicant is an individual, firm, or corporation, and if a partnership, the name of the partners, together with their addresses shall be included; the location and type of the proposed establishment; and the signature of the applicant or applicants. If the application is for a temporary or seasonal establishment, permit fees and applications must be received 48 hours prior to the event; it shall also include the inclusive dates of the proposed operation.

(d) Permit Fees.

- (1) Food establishment annual permit fees shall be reviewed, set, and adopted by ordinance of the city council on a regular basis.
- (2) No fee shall be charged to any food establishment owned and operated by a governmental agency, independent school district, institution of purely public charity or church; however, such establishments shall comply with all other requirements of this article.

(e) Inspection; issuance of permit. Upon receipt of such an application, the regulatory authority shall make an inspection of the establishment to determine compliance with the provisions of this article. When inspection reveals that the applicable requirements of this article have been met, a permit shall be issued to the applicant by the regulatory authority.

(f) Suspension of permit.

- (1) Permits may be suspended temporarily by the regulatory authority for failure of the holder to comply with the requirements of this section.
- (2) Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of this section, the permit holder or operator shall be notified in writing that the permit is, upon service of this 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 permit holder within five days.
- (3) Notwithstanding the other provisions of this article, whenever the regulatory authority finds unsanitary or other conditions in the operation of the establishment which in his judgment constitute a substantial hazard to the public health, he may, without warning, notice or hearing, issue a written notice to the permit holder or operator citing such conditions, specifying the corrective action to be taken, and if deemed necessary such order shall state that the permit is immediately suspended, and all food operations are immediately to be suspended. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition to the regulatory authority shall be afforded a hearing as soon as possible.

(g) Reinstatement of suspended permit. Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of the reinstatement of the permit. Within ten days following receipt of a written request, including a statement signed by the applicant that in his opinion the condition causing the suspension of the permit has been corrected, the regulatory authority shall make a reinspection. If the applicant is complying with the requirements of this article, the permit shall be reinstated.

(h) Revocation of permit. For serious or repeated violations of any of the requirements of this article, or for interference with the regulatory authority in the performance of his duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the regulatory authority. Prior to such action, the regulatory authority shall notify the permit holder in writing, stating the reasons for which the permit shall be permanently revoked at the end of five days following service of this notice, unless a request for a hearing is filed with the regulatory authority by the permit holder within such five-day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(i) Penalty. Any person violating any provision of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in the sum of not less than \$1,00 nor more than \$2,000.00 for each conviction. In the case of a continuing violation, each day

during which an individual violates this article, it shall be construed as separate offenses as provided in section 1.01.009. Additionally, the city shall be entitled to pursue other civil and criminal remedies to which it is entitled under law.

(j) **Hearings.** The hearing provided for in this section shall be conducted by a permit appeals committee at a time and place designated by the regulatory authority. The permit holder shall be notified of such hearing no less than five days prior to the hearing date. The permit appeals committee shall be appointed by the regulatory authority and be comprised of the city health official, the city chief building official and one other member engaged in food establishment work, such as a restaurant owner, cafeteria manager, grocery store operator, and the like. The regulatory authority shall maintain a list of such persons from which members to the permit appeals committee may be appointed on a rotating basis. Based upon the record of such hearing, the regulatory authority shall, upon the affirmative vote of the majority, make a finding to sustain, modify or rescind any official notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder by the regulatory authority within five days after the date of the hearing.

**Section 3. Penalty.** Any person, firm or corporation intentionally, knowingly or recklessly violating any term or provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a penalty of fine not to exceed the amount of Two Thousand Dollars (\$2,000) for each offense. Every day a violation continues shall constitute a separate offense.

**Section 4. Savings.** That all rights and remedies of the City of Murphy are expressly saved as to any and all violations of the provisions of any Ordinances that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

**Section 5. Cumulative/Repealer Clause.** This Ordinance shall be cumulative of all other Ordinances of the City of Murphy and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance or where expressly repealed hereby. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance.

**Section 6. Severability Clause.** If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**Section 7. Publication/Effective Date.** This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and City Charter in such cases provide.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Murphy, Texas, on this 7th day of November 2023.

  
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Scott Bradley, Mayor  
City of Murphy, Texas

ATTEST:

  
\_\_\_\_\_  
Kandi Jackson, City Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Regina A. Edwards (Nov 9, 2023 15:40 CST)  
Wm. Andrew Messer, City Attorney