

## ORDINANCE NO. 324

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCHER CITY, TEXAS PROVIDING ESTABLISHING, AND REQUIRING, A PERMIT FOR OPERATIONS BY ITINERANT FOOD VENDORS; PROHIBITING CERTAIN ACTIVITIES BY ITINERANT FOOD VENDORS; ESTABLISHING CERTAIN EXCEPTIONS TO THE REGULATIONS IN THE ORDINANCE AND PROVIDING FOR A PENALTY FOR VIOLATION OF THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR REPEAL OF ANY CONFLICTING PROVISIONS OF OTHER ORDINANCES AND SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE FOR THIS ORDINANCE.**

**WHEREAS**, the City Council of the City of Archer City, Texas (the “City”) finds that the regulations set forth in this Ordinance are required to insure the safety and welfare of the general public, compliance with all laws related for food establishments, for the good government, peace and good order of the City and to facilitate trade and commerce within the City which is consistent with the aforementioned standards, as permitted by TEX. LOC. GOVT. CODE §§51.001 and 51.012; and

**WHEREAS**, this ordinance was adopted at a meeting of the City Council of the City of Archer City, Texas: (i) at which a quorum of the members of the City Council were present, (ii) which was open to the public, as required by Chapter 551 of the Texas Government Code (the Open Meetings Act), and (iii) which was preceded with the notice required by the Texas Open Meetings Act.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Archer City, Texas:

**SECTION 1. Enactment of Article 4.04.** That the Code of Ordinances of the City of Archer City, Texas be amended to add the following as Article 4.04:

### **ARTICLE 4.04 REGULATION OF ITINERANT FOOD VENDORS**

#### **Sec. 4.04.001 Definitions**

As used in this article the following terms shall have the meanings set forth below:

*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 governmental unit (such as the City of Archer City, Archer County or the Archer City Independent School District) with the approval of the local governmental unit having control of such location.

*Exempt Organization.* An exemption 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.

*Food.* A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

*Itinerant Food Vendor.* Any person who operates a mobile food unit or a temporary food service establishment within the city.

*Mobile Food Unit.* 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.

*Permanent Food Establishment.* A permanent food establishment shall mean a “food establishment”, as that term is defined by Texas Department of State Health Services in 28 T.A.C. §228.2(57) and that is: (i) owned or leased (for a period of not less than 30 days) by the person or persons who are engaging in the business of the food establishment, (ii) located within the city and (iii) for which all necessary health permits have been obtained from all regulatory authorities.

*Regulatory Authority.* Shall have the meaning assigned to it by the Texas Department of State Health Services in 28 T.A.C. §228.2(57); that is, the local, state or federal enforcement body or authorized representative having jurisdiction over a food establishment pursuant to Chapter 437 of the Texas Health and Safety Code. “Regulatory authorities” shall refer to such enforcement bodies collectively.

Temporary Food Establishment. Any stand, booth, roadside location or other structure from which food is stored, prepared, display, serve or sold for human consumption and which is not a “permanent food establishment” as defined in this article.

#### **Sec. 4.04.002 Permit Required; Process**

(a) Permit Required. Except for exempt organizations or individuals who are sponsored by exempt organizations that have obtained a temporary permit pursuant to subsection 4.04.004(a) below and certain farmers who are exempt from the permitting requirement pursuant to subsection 4.04.004(d) below, it shall be unlawful for any person to store, serve, display, serve or sell food for human consumption from a mobile food unit or a temporary food establishment without first obtaining an annual itinerant food vendor permit from the city.

(b) Permit Application.

(1) Filing Application. A person shall apply for an itinerant food vendor permit by: (i) completing a written application, (ii) providing the information required by this section 4.04.002 and (iii) paying the required permit fee. An application will not be considered complete until the application has been fully completed, the permit fee has been paid and any check or draft for such payment has cleared, and all information required by subsection 4.04.002(c) has been provided to the city.

(2) The Application Form. The application shall be on a form prepared by the city staff and approved by the city council. The application may request any information relevant to the administration of this article 4.04 or that is necessary to protect the public’s health and welfare. In addition, the application shall contain the following:

(A) a statement or affirmation under penalty of perjury by the applicant that applicant is aware of the regulations established by this article 4.04 and that applicant has obtained all necessary permits and licenses required by the regulatory authority for operation of the mobile food unit or temporary food establishment in Archer County, Texas; and

(B) applicant’s agreement, at all times during the term of the permit: (i) to abide by all of the regulations established by this article 4.04 and all regulations of the regulatory authority, including, without limitation, all licensing and permit requirements of the regulatory authority and (ii) upon the request of any city official, that applicant will provide the city with written evidence satisfactory to the city of applicant’s compliance with such regulations not later than 3 business days after a request by the city that applicant do so;

(C) applicant's agreement, during the term of the permit: (i) to report all sales of taxable items which occur within the city to the Comptroller of Public Accounts of the State of Texas and, on those reports or returns, to identify the location of those sales occurring within the city as, in fact, taking place within the city , (ii) to pay the taxes owing on such sales, and (iii) upon the request of any city official, to provide the city with true copies of any returns relating to the periods in which applicant's operations occurred within the city, not later than 3 business days after a request by the city that applicant do so; and

(D) applicant's agreement, during the term of the permit, to provide the city with any information relevant to the administration of this article 4.04 including, without limitation, that information specified in subsection 4.04.002(c) below.

(c) Permit Fee. The application permit fee shall be established by the city council and may be modified by the city council. Each application permit fee shall cover the 1-year term of a permit.

(d) Permit Information. In addition to the written application for an itinerant food vendor permit, the applicant shall provide proof satisfactory to the city secretary or the designee of the city secretary of the following:

(1) That the applicant and all persons who will be involved in the itinerant food vendor operations to be conducted within the city have obtained all required licenses, permits and inspections required by the regulatory authority for the operation of the storage, service, display, serving or sale of food;

(2) That the applicant and any other person or entity involved in applicant's operations with respect to the mobile food unit or temporary food establishment have obtained a current sales tax permit from the Comptroller of Public Accounts of the State of Texas; and

(3) That any mobile food unit has a current vehicle license and inspection certificate and the liability insurance required by the State of Texas for such motor vehicle.

(e) Action on Permit. An application for an itinerant food vendor permit will be reviewed by the city secretary or the designee of the city secretary. A permit may be denied if the applicant or any person involved in the itinerant food vendor operations of the applicant:

(1) Has a history of violations of the regulations in this article or similar regulations by any other municipality or regulator authority within the last year;  
or

(2) Has, within 1 year of the date the application is filed: (i) failed to provide any information relating to prior operations which has been requested by the city pursuant to this article 4.04, (ii) been convicted of a violation of any of the provisions of this article 4.04, or (iii) had a permit issued pursuant to this article 4.04 revoked.

(3) Has any unpaid sales tax obligations owing to the State of Texas; or

(4) Does not provide any of the information required by Section 4.04.002(b) above; or

(5) Does not fully complete all information required on the application, does not pay the application fee or any check or draft provided for the application fee is returned unpaid by the bank or financial institution on which it is drawn; or

(6) If the applicant, having submitted some portion of the documentation required for the issuance of a permit, fails, within 7 days of that date: (i) to submit the remaining documentation or information required by this section 4.04.002 or (ii) fails to pay the required permit application fee, or (iii) the check or draft in payment of the permit application fee is returned unpaid and applicant does not pay the fee in cash or certified funds within 48 hours of notice by the city to applicant requesting that applicant do so.

(f) Revocation of Permit. A permit issued by the city under this article 4.04 shall be conditional and may be revoked if:

(1) The city determines that any of the information provided in the application process or on the application was false when submitted or has become false since the application was granted; or

(2) The permittee, or any person associated with the permittee's activities as an itinerant food vendor, violates any of the provisions of this article 4.04 or the applicable regulations of any regulatory authority; or

(3) The permittee, or any person associated with the permittee's activities as an itinerant food vendor, violates any of the following provisions of the Texas Penal Code: Title 5 (Offenses Against the Person), Title 6 (Offenses Against the Family), Title 7 (Offenses Against Property), Title 9 (Offenses Against Public Order and Decency), Title 9 (Offenses against Public Health, Safety and Morals) or Title 11 (Organized Crime); or

(4) The activities of the permittee or any person associated with the permittee's activities as an itinerant food vendor, endanger, or are likely to endanger, public welfare, health or safety; or

(5) The permittee fails to provide, within the time limits specified in this article 4.04, any information required by this article 4.04 following a request by the city for such information, including, without limitation, proof that all sales taxes have been timely and properly reported and paid.

(g) Effect of Permit Revocation. 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.

(h) Appeal Hearing. An applicant or permittee (referred to in this subsection as the "appellant") will be given written notice of the denial of an application or the revocation of a permit (referred to in this subsection 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 city manager by giving written notice to the city manager of that request. Such notice by the appellant to the city manager must be delivered to the city manager at city hall not less than 7 days from the date notice the adverse action is mailed to the appellant. The city manager 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 city manager will consider the information provided by the appellant and will either affirm, overturn or modify the prior decision. The decision of the city manager shall be final.

#### **Sec. 4.04.003 Prohibited Activities**

(a) Use of Public Thoroughfares or Property. Except for charitable events conducted by with the permission of a governmental unit, as provided in subsection 4.04.004(b) below, it shall be unlawful for any person to establish, maintain or operate a mobile food unit or temporary food establishment upon any public street, alley, median, thoroughfare, sidewalk, public park or any public property.

(b) Obstruction of Traffic Prohibited. Except for charitable events conducted at a location approved by the city council pursuant to subsection 4.04.004(c) below, it shall be unlawful for any person to locate or operate a mobile food unit or temporary food establishment at any location unless there is adequate parking available for customers on the property on which the mobile food unit or temporary food establishment is located. Parking will be presumed to be inadequate if the operations of the itinerant food vendor

in any way block, obstruct, or unduly hinder passage on pedestrian or vehicular traffic on public streets or alleyways.

(c) Restrictions on Door to Door Sales of Food. Except as provided in this subsection 4.04.003(c), it shall be unlawful for any person to engage in the door to door sale of food. This prohibition shall not apply in the following circumstances:

(1) When a person has complied with all rules and regulations of the State of Texas and the regulatory authority, including those regulations relating to the preparation, storage and sale of food and the licensing of persons involved in such activities and has, in addition to those requirements, obtained a peddler's or solicitor's permit from the city pursuant to article 4.02 (Peddlers and Solicitors) of this code; or

(2) When a person has complied with all rules and regulations of the State of Texas and the regulatory authority, including those regulations relating to the preparation, storage and sale of food and the licensing of persons involved in such activities and is exempt from the city's peddler or solicitor permit requirements pursuant to section 4.02.032 of this code (such as certain farmers and local nonprofit organizations).

(d) Responsibility of Land Owners. It shall be unlawful for any person owning land within the city to allow any other person to operate a mobile food unit or temporary food establishment on their property if:

(1) The person operating the mobile food unit or temporary food establishment has not obtained a permit to do so under this article 4.04; or

(2) The permit of a person operating a mobile food unit or temporary food establishment under this article 4.04 has been revoked; or

(3) The landowner knows, or has reason to know, that the itinerant food vendor is operating in a manner which violates the rules of any regulatory authority or the regulations of this article 4.04.

#### **Sec. 4.04.004 Exceptions**

(a) Temporary Permit; Fee Waived. An exempt organization or a person sponsored by an exempt organization who proposes to operate a mobile food unit or temporary food establishment at a charitable event may apply for a temporary permit which will allow operations during the course of the charitable event. No temporary permit shall be for more than 3 consecutive days. No permit fee shall be required of an exempt organization



or a person sponsored by an exempt organization who proposes to operate a mobile food unit or temporary food establishment at a charitable event. An exempt organization or a person sponsored by an exempt organization may not be issued more than four permits in any calendar year.

(b) Use of Public Thoroughfares or Property. The prohibitions on the use public thoroughfares and public property pursuant to subsection 4.04.003(a) above shall not apply to an exempt organization or a person sponsored by an exempt organization operating a mobile food unit or a temporary food establishment at a charitable event if: (i) a temporary permit has been obtained from the city pursuant to subsection 4.04.004(a) above and (ii) the city council or the governing body of all governmental units that own the property or have jurisdiction over the public thoroughfare on which the charitable event is to take place has or have agreed to the use of such public property or thoroughfare for the charitable event.

(c) Obstruction of Traffic. The prohibition on the obstruction of traffic pursuant to subsection 4.04.003(b) above shall not apply to exempt organization or a person sponsored by an exempt organization operating a mobile food unit or temporary food establishment at a charitable event if: (i) a temporary permit has been obtained from the city pursuant to subsection 4.04.004(a) above and (ii) the mobile food unit or temporary food establishment is being operated within an area which has been approved by the city council 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.

(d) Farmers. The permit requirements of Section 4.04.002 shall not apply to a farmer selling agricultural products that were raised or grown by the farmer or his family.

(e) Fee waived. The permit fee of Section 4.04.002(c) shall not apply to any established business of a proprietary nature in the City and/or doing business out of a central location or storefront.

#### **Sec. 4.04.005 Violations; Penalty**

Any person who shall fail to comply with any of the provisions of this article 4.04 shall upon conviction thereof, be punished by a fine in accordance with the general penalty provision found in Section 1.01.009 of this code. Each day that a violation of the provisions of this article 4.04 occurs shall be a separate offense.

## **SECTION 2. Permit Fee**



That the annual permit fee for an application pursuant to this ordinance shall be \$100. This fee shall be listed as Section A4.004 in the Appendix to this code.

### **SECTION 3. Conflicting Provisions.**

That all ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

### **SECTION 4. Severability.**

If any clause, section, or other part or application of this ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not affecting the remaining portions or applications remaining in full force and effect.

### **SECTION 5. Effective Date.**

This ordinance shall become effective ten (10) days after the caption of this ordinance has been published in the Archer County News.

PASSED AND APPROVED on April 21, 2016

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Kelvin Green, Mayor

ATTEST:

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Kim Whitsitt, City Secretary