ORDINANCE NO. 2052

AN ORDINANCE OF THE CITY OF BRYAN, TEXAS, AMENDING THE BRYAN CITY CODE OF ORDINANCES; ADDING CHAPTER 91, ENTITLED "MOBILE FOOD VENDORS"; PROVIDING FOR PENALTY; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, food trucks and other mobile food establishments are a vibrant and growing part of the City's food culture; and

WHEREAS, mobile food establishments present particular needs and concerns with regard to public health and welfare; and

WHEREAS, council desires to establish regulations to both allow mobile food establishments to operate and flourish within the City's Corporate Limits and protect the morals, health, safety and welfare of the community; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF BRYAN, TEXAS, THAT:

Section 1.

The City of Bryan's Code of Municipal Ordinances is hereby amended by the addition of a new Chapter 91, entitled "Mobile Food Vendors," as follows:

Chapter 91. Mobile food vendors.

90-01. Definitions.

(a) **City** shall mean City of Bryan.

(b) **Edible goods** shall include, but are not limited to:

(1) Prepackaged food including, but not limited to, candy, beverages, and ice cream.

(2) Prepared food which is prepared off-location for sale in the mobile food unit.

(3) On-site prepared food which is prepared in the mobile food unit.

(c) **Food service establishment** shall mean businesses that sell edible goods and have been inspected and approved by the Brazos County Health Department, including commercial kitchens and commissaries, and shall specifically exclude accessory or self-serve retail food sales.

(d) **Mobile** shall mean the state of being in active, but not necessarily continuous, movement.

(e) **Mobile food vendors** shall mean any business which sells edible goods from a non-permanent (i.e. mobile) location within the City of Bryan. The term shall include, but not be limited to:

(1) **Mobile food trucks:** A self-contained motorized unit selling items defined as edible goods.

(2) **Concessions carts:** Mobile vending units that must be moved by non-motorized means.

(3) **Concession trailers:** A vending unit which is pulled by a motorized unit and has no power to move on its own.

(f) **Non-refrigerated** shall mean edible goods that are not required to be kept at a temperature below forty-one (41) degrees Fahrenheit according to the federal Food and Drug Administration and the Texas Food Establishment Rules.

(g) **Sell** shall mean the act of exchanging a good for payment or in return for a donation.

(h) **Stationary location** shall mean the position of the mobile food vendor when addressing the public for the purpose of sales and not in motion.

90-02. Permit and Application.

(a) *Permit Application.* No person shall act as a Mobile Food Vendor in the City without a permit issued by the City. Every permit, including those from the City of Bryan and Brazos County Health Department, shall be displayed at all times in a conspicuous place where it can be read by the general public on the Mobile Food Vendor's Truck, Concession Cart, or Concession Trailer. A person shall make application for a permit to the City on forms furnished by the City and shall provide the following information:

(1) Name, legal name of business or entity, business address, and telephone number of the applicant.

(2) The trade name under which the applicant conducts business.

(3) Type of business organization or corporation as defined by state law;

(4) If applicable, Copy of Chapter or Articles of Incorporation and current listing of directors, partners, or principals (publicly traded companies are exempted);

(5) Sales tax number with a copy of sales tax permit;

(6) Signed permission from all private property owners where the Mobile Food Vending unit will be stationed;

(7) Name, phone number, and photocopy of the applicant's driver's license;

(8) Proof of motor vehicle insurance.

(9) Copy of permits to do business in Texas for foreign companies;

(10) Description of product being sold;

(11) Vehicle and/or unit make, model, and license plate numbers;

(12) Copy of the Brazos County Health Department permit issued to the Mobile Food Vendor.

(b) *Fees.* All fees required under this section will be set by City Council Resolution.

(c) *Permit Decisions.* The City will evaluate the data furnished by the applicant and may require additional information. Within 30 days of receipt of a completed permit application, the City will determine whether or not to issue a Mobile Food Vendor permit. The City may deny an application for a permit for any of the following grounds:

(1) Failing to provide all of the information required by the City;

(2) The applicant's past record of ordinance violations;

(3) Safety record of the applicant or any driver, based on such things as civil and criminal lawsuits and violations of environmental laws and ordinances;

(4) Providing false, misleading or inaccurate information to the City.

(d) *Permit.*

(1) Permits shall be issued for a time period, not to exceed one (1) year or may be stated to expire on a specific date.

(2) Permits are required to be renewed prior to the expiration date.

(3) A new permit application is required to be submitted within fifteen (15) days of the following, whereupon the previous permit will be voided and the previous permit canceled:

i. When ownership of the operating entity is changed; or

ii. The City determines that operations or management methods are no longer adequately described by the existing permit application.

(4) Permits are not transferrable.

(e) *Suspension or Revocation of Permit.* A permit may be revoked by the City for any violation of this section.

(f) *Appeals.* A Mobile Food Vendor has the right to appeal a determination made by the Public Works Director to the City Manager by submitting a written appeal to the City Secretary, with a copy to the Public Works Director, not more than five (5) days after receiving notice of the suspension or denial of permit. The City Manager or his or her designee will hear the appeal and issue a written finding not more than twenty days after

the notice was delivered to the City Secretary. The City Manager's determination is final.

90-03. Zoning and Location Restrictions.

(a) *Distance Regulations*

(1) No Mobile Food Vendor shall conduct business within any single-family residential or agricultural zoning district, including townhouse districts, but may be located in such districts when serving and within one hundred (100) feet to a property with an active building permit or located within a public park facility. A mobile food vendor selling food that is not prepared in the mobile food vending unit is exempted from this subsection.

(2) A Mobile Food Vendor may not be located within one hundred (100) feet of the property line of an open and operating fixed-location Food Service Establishment. This buffer may be reduced upon receiving written permission from said Establishments.

(b) *Stationary Restrictions.* A Mobile Food Vendor shall not conduct sales at a stationary location:

(1) For a duration of no more than five (5) consecutive days at a location.

(2) For a duration exceeding eight (8) hours per location per day.

(3) For a duration exceeding thirty (30) minutes on any public street designated on the City of Bryan's Thoroughfare Plan as a major collector or lesser.

(4) On any public street designated on the City of Bryan's Thoroughfare Plan as a minor arterial or greater.

(5) In congested areas where the operation impedes vehicular or pedestrian traffic or where it impedes access to the entrance of any adjacent building or driveway.

(6) In public parking spaces in downtown Bryan, the boundaries of which are:

A. North: MLK, Jr. Street

B. South: 30th Street

C. East: Texas Avenue

D. West: Sims Avenue

(7) In a designated bike lane.

(8) Between the hours of 2:00 a.m. and 5:00 a.m.

(9) Within the boundaries of Downtown First Fridays during the event, held on the first Friday of each month between the hours of 5:00 pm and 10:00 pm, unless specifically authorized by permit issued by the Downtown Bryan Association. The boundaries of Downtown First Fridays are:

A. North: MLK, Jr. Street

B. South: 30th Street

C. East: Texas Avenue

D. West: Sims Avenue

(10) Within 500 feet of any festival entrance during the Texas Reds festival.

(c) *Location Regulations.*

(1) No Mobile Food Vendor shall locate on any private property without written permission to do so and 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, shall be kept within the mobile vending unit at all times.

(2) No person shall distribute, deposit, place, throw, scatter or cast any commercial handbill in or upon any motor vehicle without permission of the owner.

(3) No person shall distribute, deposit, place, throw, scatter or cast any commercial handbill upon any premises if requested by the property owner or City official not to do so, or if there is placed near or at the entrance thereof a sign bearing the words "no advertisement".

90-04. Mobile Food Vendor Requirements.

(a) Each unit shall be equipped with a trash receptacle with lid to prevent windblown litter and shall be disposed of in accordance with the City's Solid Waste Ordinance. All solid waste and recyclables shall be bagged. Receptacles shall not be overfilled to prevent complete lid closure. All disturbed areas must be cleaned following each stop at a minimum of twenty (20) feet of the sales location.

(b) If liquid waste results from food processing of a Mobile Food Vendor's Truck, Concession Cart, or Concession Trailer, the waste shall be contained in a permanently installed retention tank located on the vending unit.

(c) Liquid waste, solid waste, and recyclables shall be removed from a Mobile Food Vendor's Truck, Concession Cart, or Concession Trailer at a disposal site approved by the City or by a City permitted waste transporter. Removal of waste shall be in a manner that a public health hazard or nuisance is not created.

(d) Liquid waste from a Mobile Food Vendors shall be characterized as food service waste and shall meet the waste removal, manifesting, disposal, and treatment requirements of

the City's Sewer Use Ordinance prior to discharge into the City's publically owned treatment works.

(e) Waste generated from washing or maintenance of Mobile Vending Unit shall be done in a manner to prevent release on public or private property.

(f) The Mobile Food Vendor will be subject to inspection by the City upon permit application and may be subject to random inspection and upon reissuance of the permit.

(g) No sales are allowed within public park facilities while authorized park concession units are operating.

(h) Mobile Food Vendor's Truck, Concession Cart, or Concession Trailer shall be self-sufficient for water and sewer utilities. Use of water and wastewater hoses to provide utility service to Mobile Vending unit is prohibited. Extension cords may be used for electrical service if the equipment and connection(s) used between the Vending Unit and supplying source pose no threat to public safety (i.e. personal injury or fire).

(i) All signage used by the Mobile Food Vendor, including signage painted directly on the mobile food vending unit, shall meet the standards and requirements of the City's sign ordinance, but shall not be required to obtain a sign permit under that chapter. (Chapter 98, City of Bryan Code of Ordinances.)

(j) Mobile food vendors shall maintain the following fire prevention devices:

(1) All mobile food vendors selling food cooked in the mobile food vendor unit shall keep at least one class ABC fire extinguisher with a minimum 3A40BC rating, with visible current inspection (tagged), fully charged, and located within 30 feet of cooking equipment;

(2) All mobile food vendor units producing grease-laden vapors (grills, fryers, etc.) shall keep, in addition to the extinguisher required in subsection (1), a Class K rated portable fire extinguisher, with visible current inspection (tagged), fully charged, and located within 30 feet of cooking equipment;

(3) All mobile food vendor units producing grease-laden particles within the mobile unit shall install an extinguishing vent hood (Type 1 or other, if approved by the City of Bryan Fire Marshal or designee), which must be tested in the presence of the Bryan Fire Marshal or designee before a permit may be issued; and

(4) All mobile food vendor units using compressed gas (LP/propane cylinders, etc.) shall keep gas containers secured outside of the passenger area of the Vending Unit. Compressed gas cylinders shall be secured by one or more restraints to a fixed object or nested and secured by one or more restraints and cannot be located closer than ten (10) feet from any trash or combustible material. All valves, hoses, and connections used shall be rated for use with petroleum gas.

90-05. Enforcement.

(a) It shall be unlawful for an individual to sell edible goods while displaying a valid permit issued by the City of Bryan in the name of another individual, organization, or entity outside of an employment relationship.

(b) It shall be unlawful for any individual directly or through an agent or employee to sell goods within the corporate limits of the City after the expiration of the permit issued by the City of Bryan under this Section.

(c) It shall be unlawful for an individual directly or through an agent or employee to misrepresent on the permit affidavit any acts that are regulated under this Section.

(d) It shall be unlawful for any individual directly or through his agents or employees to represent that the issuance of a permit by the City of Bryan constitutes the City's endorsement or approval of the product for sale.

(e) It shall be unlawful to operate a Mobile Food Vendor operation that is not in compliance with the Texas Food Establishment Rules as amended from time to time.

(f) Any person convicted of a violation of any provision of this subsection shall be guilty of a **Class C misdemeanor** punishable by a fine not to exceed $2,000.00 per occurrence in accordance with section 1-14 of this Code of Ordinances.

Section 2.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 3.

The Bryan City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

Section 4.

If any section, paragraph, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

Section 5.

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001, *et seq.*, of the Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given.

Section 6.

It is the intention of the City Council that this ordinance shall become a part of the Bryan City Code and it may be renumbered and codified therein accordingly.

Section 7.

That the City Secretary is directed to publish this ordinance in a newspaper of general circulation in the City of Bryan in compliance with the provisions of the City Charter, which publication shall be sufficient if it contains the title of this ordinance, the penalty provided therein for violation thereof, and the effective date of the ordinance.

Section 8.

That this ordinance shall take effect from and after its final passage and publication as required by law. The effective date of this Ordinance will be July 15, 2014.

PRESENTED AND GIVEN first reading the 24th day of June , 2014, at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, PASSED AND APPROVED on the 8th day of July , 2014, by a vote of 7 ayes and 0 noes at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

Mary Lynne Stratta, City Secretary

CITY OF BRYAN:

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney