

## ORDINANCE NO. 20250107004

**AN ORDINANCE OF THE CITY OF NIEDERWALD, TEXAS REGULATING MOBILE AND PORTABLE FOOD VENDORS WITHIN THE CITY; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS.**

**WHEREAS**, the City of Niederwald (“City”) is a Type A general law municipality; and

**WHEREAS**, the City Council of the City is authorized by Texas Local Government Code Section 51.001 to adopt ordinances for the good government, peace, or order of the municipality; and

**WHEREAS**, the City Council of the City desires to adopt this Ordinance in order to promote the health, safety and welfare of the citizens of the City of Niederwald, Texas by regulating mobile and portable food vendors;

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

### MOBILE AND PORTABLE FOOD VENDORS

#### **Sec. 1 - Definitions.**

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

Approved source. A source of food found to be safe, unadulterated and honestly presented, as further described in section 229.164 of the Texas Food Establishment Rules, as amended.

Commissary. A central preparation facility or other fixed food establishment that stores, prepares, packages, serves, vends or otherwise provides food for human consumption to mobile, temporary and portable food vendors.

Health authority. The city, or its designee, and/or any other agency charged with enforcement of regulations applicable to establishments regulated under this Ordinance.

Mobile food vendor. A vendor who operates or sells food for human consumption, hot or cold, from a cart, trailer or kitchen mounted on chassis, with an engine for propulsion or that remains connected to a vehicle with an engine for propulsion.

Mobile food vendor - cold. A vendor who operates or sells cold food for human consumption from a cart, trailer or kitchen mounted on chassis, with an engine for propulsion or that remains connected to a vehicle with an engine for propulsion.

Mobile food vendor - hot. A vendor who operates or sells hot food for human consumption from a cart, trailer or kitchen mounted on chassis, with an engine for propulsion or that remains connected to a vehicle with an engine for propulsion.

Residential district. A residentially zoned district as defined by the zoning ordinance of the city, including multiple-family residential.

Residential use. A single-family, townhouse, duplex, mobile home, or multiple-family use as defined in the zoning ordinance of the city.

Temporary food event. An organized event on vacant private property of limited duration, operating within 500 feet of the site of an approved special event involving the sale of food and/or beverages for human consumption.

Texas Food Establishment Rules or rules. 25 Texas Administrative Code 229, subchapter K, as amended.

## **Sec. 2 - Purpose.**

This entire Ordinance is and shall be deemed an exercise of the police power of the state, and the city for the public safety, convenience and protection of the city and the citizens of the city, and all of the provisions hereof shall be construed for the accomplishment of that purpose.

## **Sec. 3 - Requirements applicable to all mobile food vendors and temporary food events.**

- (a) It shall be unlawful for mobile food vendors and temporary food events to operate within the city limits, without having first applied for and obtained a permit from the city as provided for in this Ordinance. It shall be unlawful for a permit holder to fail to comply with any condition of such permit or requirement of this Ordinance.
- (b) Mobile food vendors and temporary food events must meet all applicable state and local laws and regulations, including but not limited to 25 Texas Administrative Code 229, subchapter K, as amended (the "Texas Food Establishment Rules" or the "rules").
- (c) Mobile food vendors and temporary food events must operate from an approved commissary in good standing as defined and required in the rules. An existing food establishment may serve as a commissary if approved by the city. The commissary and/or existing food establishment would be required to have an approved vehicle storage facility, approved potable water hookups, approved wastewater drainage facilities, approved grease interceptor hookups and size, and any other accommodations as determined necessary by the city to ensure compliance with all regulatory codes. The commissary shall comply with all food establishment rules, and hold all current licenses and permits as required by the rules. Valid copies of the commissary's licenses and permits used under the food establishment rules and most recent health inspection report must be kept on file with the city. Mobile food vendor, and temporary food events shall provide documentation of each visit to or service by the commissary and shall have that documentation immediately available for inspection by the city. Mobile food vendors and temporary food events required to operate from a commissary under the rules must complete a commissary certification letter.
- (d) Mobile food vendors and temporary food events must be equipped with commercial mechanical facilities sufficient to provide proper cooking ventilation and fire suppression for eating establishment, as established under the city's adopted building codes. All equipment on the vehicle is to be NSF International (formerly National Sanitation Foundation) approved, American National Standards Institute (ANSI) approved, or of commercial grade.
- (e) The mobile food vendor and temporary food event shall provide covered garbage and storage facilities for employee and customer use of sufficient size that refuse is fully contained in a manner that prevents litter and remains insect and rodent-proof.
- (f) Plumbing. The mobile food vendor and temporary food event unit or vehicle must meet the following standards:
  - (1) All liquid waste shall be discharged to an approved sanitary sewage disposal system at

the commissary or through an authorized service provider. All used fats, oil or grease shall be discharged to an approved grease interceptor at the commissary or through an authorized service provider. Used fats, oils or grease shall not be discharged to any unauthorized food establishment grease interceptor.

- (2) Liquid waste shall not be discharged from the retention tank when the mobile food vendor and temporary food event unit or vehicle is open to the public or in the process of preparing food.
  - (3) The waste connection shall be located below the water connection to preclude contamination of the potable water system.
  - (4) Connections to a water or sewage system at an operation location is prohibited.
- (g) All employees of the permit holder must have a valid food handler's training certificate.
  - (h) The mobile food vendor and temporary food event shall secure and display a health permit from the county, and a permit issued under this Ordinance, prior to the operation of such use.
  - (i) The mobile food vendor and temporary food event shall display and provide the city with a copy of the state sales tax and use certificate.
  - (j) Any vehicles integral to the mobile food vendor and temporary food event shall provide evidence of current state vehicle registration, inspection and insurance.
  - (k) If the unit used for the mobile food vendor and temporary food event is not commercially designed, then a plan or drawing showing the layout of the mobile unit must be submitted to the city for review with the application for permit.
  - (l) Mobile food vendor and temporary food event facilities shall be separated from existing buildings and other mobile food vehicles by a minimum of 12 feet. Mobile food vendors and temporary food events shall be subject to all current zoning and front setback regulations of the city. Mobile food vendors and temporary food events shall not set up in fire lanes or parking spaces that are required by the certificate of occupancy of an existing business.
  - (m) Each mobile and portable food vendor, and temporary food event shall be clearly marked with the food establishment's name or a distinctive identifying symbol. The lettering shall be at least three (3) inches in height and of a color contrasting with the background color. If a symbol is used, it shall be at least twelve (12) inches in diameter or of an equivalent size.
  - (n) Each mobile food vendor and temporary food event shall display the city permit and permit number.

#### **Sec. 4 - Mobile food vendors.**

In addition to the requirements above, mobile food vendors shall comply with the following requirements:

- (1) Mobility. A mobile food vendor must demonstrate mobility at any reasonable time if requested by any peace officer, health officer, or designated city employee.
- (2) Operation capacity limited. Unless specified herein, the operator of a mobile food vendor

shall prepare, serve, store and display food and beverages on or in the mobile food unit itself; and shall not attach, set up, or use any other device or equipment intended to increase the selling, serving, storing or displaying capacity of the mobile food vendor. It shall be unlawful for the operator of a mobile food vendor to:

- (A) Provide or allow any sign or banner to remain that is not attached and solely supported by the mobile food vendor unit;
  - (B) If remaining in one location on private property for greater than one hour, one sandwich board is permitted which may be placed during business hours, but must be removed daily;
  - (C) Sell food outside of the vehicle, for example, from a table under a freestanding canopy. All food vending shall be done from the mobile food vendor unit.
- (3) Electrical. Electricity shall be from a generator and utilize cords in conformance with the National Electrical Code as adopted by the city, including amendments thereto.
- (4) Access to restroom facilities. Prior to the issuance of a permit, the operator of a mobile food vendor shall submit to the city and comply with the following:
- (A) Written proof of availability of restrooms with flushable toilets connected to a public water and wastewater system for the use of the mobile food vendor employees and customers located in a business establishment within 150 feet of each location where the mobile food vendor unit will be in operation for more than one (1) hour in any single day.
  - (B) Proof of availability of adequate facilities shall be in the form of a written and notarized statement from the owner, or owner's agent, including the name, address and telephone number of the property owner or authorized agent, and the type of business and hours of operation, granting permission for the use of the facilities. If the business owner is a partnership or corporation, the statement shall include the name, address and telephone number of one of the partners or officers.
  - (C) A copy of the notarized statement shall be immediately available for inspection by the city on the mobile food vendor unit.
- (5) Hours of operation. All mobile food vendors are subject to the hours of operation allowed for food establishments in the zoning district they are operating in, but in no case shall the mobile food vendors operate prior to 6:00 a.m. or after 30 minutes past dusk within 200 feet of a property within a residential zoning district or containing a residential use.
- (6) Private property. Operation locations on private property at which the mobile food vendor will remain for more than one hour shall comply with the following:
- (A) Be located in a zoning district that allows eating establishments;
  - (B) The private property must be developed and improved, and contain an existing, permanent business operating in a building with a certificate of occupancy at all times while the mobile food vendor occupies the property.
  - (C) The mobile food vendor must not be located in such a manner as to cause the site to no longer comply with minimum parking requirements. The site must have sufficient parking meeting city standards for the permanent business as well as the mobile food vendor and the mobile food vendor's customer waiting and/or seating area.
  - (D) Submit with the permit application written authorization or other suitable documentation

showing that the owner of the property consents to the mobile food vendor operating on said property.

- (E) Provide written proof of availability of restrooms with flushable toilets connected to a public water and wastewater system for the use of the portable food vendor employees and customers, if customer seating is provided, located in a business establishment on the parcel hosting the mobile food vendor. Proof of availability of adequate facilities shall be in the form of a written and notarized statement from the owner, or owner's agent, including the name, address and telephone number of the property owner or authorized agent, and the type of business and hours of operation, granting permission for the use of the facilities. If the business owner is a partnership or corporation, the statement shall include the name, address and telephone number of one of the partners or officers.

- (7) Public property. Mobile food vendors shall not operate within a public park or publicly owned property or site without written permission from the city administrator or the city administrator's designee.

- (8) Permit renewal and fees.

- (A) Mobile food vendor permits expire at the end of the calendar quarter in which they were issued and must be renewed every calendar quarter. Renewal of permits shall be treated as a new application.

- (B) Fees for the mobile food vendor-hot and mobile food vendor-cold are as follows:

- Mobile food vendor-hot: \$100
- Mobile food vendor-cold: \$50

Where both hot and cold food are offered, only one permit is required, and the permit for hot food will prevail. Permits will not be prorated.

### **Sec. 5 - Temporary food event.**

In addition to the requirements above, temporary food events shall comply with the following requirements:

- (1) Size. If any temporary structure is equal to [or] larger than two hundred (200) square feet in diameter, a certificate confirming the use of flame-retardant material shall be provided by applicant.
- (2) Zoning districts. Temporary food events are permitted in any zoning districts within which eating establishments are permitted, where each of the following conditions are met:
- (A) A temporary food event shall operate no more than six (6) calendar days in a calendar year on a parcel, excluding the time necessary to setup and takedown.
- (B) Food vendors at temporary food event shall comply with the standards for mobile and/or portable food vendors set forth in this Ordinance, as applicable, except that a temporary food event may utilize vacant property.
- (C) The temporary food event must not be located in such a manner as to cause the site to no longer comply with minimum parking requirements. The site must have sufficient

parking meeting city standards for the permanent business, if present.

- (D) Submit with the permit application written authorization or other suitable documentation showing that the owner of the property consents to the temporary food event operating on said property.
- (3) Hours of operation. Temporary food event may operate only during the hours allowed by the zoning district they are located in so long as restroom access is still available.
- (4) Access to restroom facilities. Prior to the issuance of a permit, the operator of a temporary food event shall submit to the city and comply with the following:
  - (A) A sufficient number of portable sanitation facilities be provided based on the Portable Sanitation Association International (PSAI) policy, city policies, and city codes, including quantity that will be ADA accessible; or
  - (B) Written proof of availability of restrooms with flushable toilets connected to a public water and wastewater system for the use of the portable food vendor employees and customers located in a business establishment within 500 feet of the parcel hosting the temporary food event. Proof of availability of adequate facilities shall be in the form of a written and notarized statement from the owner, or owner's agent, including the name, address and telephone number of the property owner or authorized agent, and the type of business and hours of operation, granting permission for the use of the facilities. If the business owner is a partnership or corporation, the statement shall include the name, address and telephone number of one of the partners or officers. A copy of the notarized statement shall be immediately available for inspection by the city on the portable food vendor unit.
- (5) Alcoholic beverages. If alcohol will be served, temporary food events shall obtain applicable Texas Alcoholic Beverage Commission or successor agency permits.

#### **Sec. 6 - Inspection.**

- (a) The health authority may inspect a mobile food vendor and temporary food event during regular business hours or at another reasonable time to determine compliance with this Ordinance.
- (b) The health authority may examine or sample food that is stored, prepared, packaged, served or otherwise provided for human consumption.
- (c) The health authority may examine the records limited to obtaining information related to food and supplies purchased, received or used; or an employee.
- (d) After inspecting, the health authority shall inform the mobile food vendor or temporary food event of findings.
- (e) If a violation is found, the health authority shall:
  - (1) Prescribe a reasonable time period for correction of violations; or
  - (2) Perform reinspections at reasonable time intervals to determine whether required corrections are made;
- (f) The mobile food vendor or temporary food event shall correct a violation:



- (1) As soon as possible; or
- (2) If the health authority approves, not later than the 10th day after the date of the inspection.

**Sec. 7 - Permit denial, revocation and appeal.**

- (a) The city administrator or city administrator's designee may deny or revoke a permit issued under this Ordinance by a mobile food vendor or temporary food event if the permit holder or the permit holder's employee:
  - (1) Commits critical or repeated violations of applicable law;
  - (2) Knowingly provides false information on an application;
  - (3) Interferes with the health authority in the performance of the health authority's duties;  
or
  - (4) If a permitted establishment under this Ordinance changes ownership and there are violations that must be corrected to meet applicable standards.
- (b) Before denying or revoking a permit, the health authority shall provide the permit holder or person in charge with written notice of the pending permit revocation or denial. The written notice shall include:
  - (1) The reason the permit is subject to denial or revocation; and
  - (2) If applicable:
    - (A) The date on which the permit is scheduled to be revoked; and
    - (B) A statement that the permit will be revoked on the scheduled date unless the permit holder files a written request for a hearing with the health authority not later than the 10th day after the date the notice is served.
- (c) The former permittee may appeal the revocation or denial of a permit by submitting a written request for appeal along with any evidence supporting the appeal to the city administrator within ten days of receiving the notice of revocation. The city administrator will make a decision within a reasonable time of receipt of the appeal, but no later than 30 days after receipt. The city administrator's decision shall be final.

**Sec. 8 – Penalty.**

A violation of this Ordinance is considered a violation pertaining to fire safety, zoning, public health and/or sanitation and upon conviction thereof is punishable by a fine not to exceed two thousand dollars (\$2,000.00). Each day that a violation exists is considered a separate violation.

**Sec. 9 - Severability.**

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. City hereby declares that it would have passed this Ordinance, and each section, subsection, sentences, clauses and phrases be declared unconstitutional or invalid.

**Sec. 10 - Repealer.**

Any other ordinances or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

**Sec. 11 - Effective Date.**

This Ordinance shall become effective upon adoption and publication as required by law.

**Sec. 12 - Proper Notice and Meetings.**

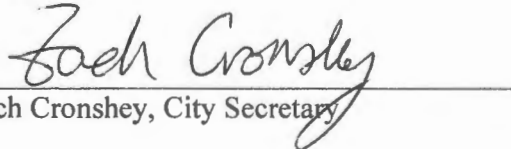
It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act, Chapter 551 of the Texas Government Code.

**PASSED AND APPROVED**, at the meeting of the City Council held on this the 7<sup>th</sup> day of January, 2025.



Hon. Connie Wood, Mayor

**ATTEST:**



Zach Cronsley, City Secretary