

**Notice of City Council Regular Meeting  
AGENDA**

**June 13, 2023 at 6:00 PM**

**NOTICE IS HEREBY GIVEN** that a Meeting of the Montgomery City Council will be held on **Tuesday, June 13, 2023, at 6:00 PM** at the City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas.

Members of the public may view the meeting live on the City's website under Agenda/Minutes and then select **Live Stream Page (located at the top of the page)**. The meeting will be recorded and uploaded to the City's website.

**CALL TO ORDER**

**INVOCATION**

**VISITOR/CITIZENS FORUM:**

Citizens are invited to speak for three (3) minutes on matters relating to City Government that relate to agenda or non-agenda items. Prior to speaking, each speaker must be recognized by the Presiding Officer. All speakers should approach the podium to address Council and give their name and address before sharing their comments. City Council may not discuss or take any action on an item, but may place the issue on a future agenda.

**PLEDGE OF ALLEGIANCE TO FLAGS**

**CONSENT AGENDA:**

- 1.** Approval of the following minutes:
  - (a) City Council & Board of Adjustment Meeting 05-09-2023
  - (b) City Council Workshop 06-05-2023

**CONSIDERATION AND POSSIBLE ACTION:**

- 2.** Consideration and possible action on calling a Public Hearing related to a Special Use Permit application for 14640 Liberty Street as submitted by Evan Ballew.
- 3.** Consideration and possible action on: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING CHAPTER 64 PEDDLERS, SOLICITORS AND VENDORS OF THE CITY CODE OF ORDINANCES; REPEALING CHAPTER 64 IN ITS ENTIRETY AND ADOPTING THE LANGUAGE HEREIN, PROVIDING A SEVERANCE CLAUSE AND TEXAS OPEN MEETINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.
- 4.** Consideration and possible action on: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING CHAPTER 98 ZONING, ARTICLE III DISTRICTS AND ZONING MAP, DIVISION I GENERALLY, SECTION 98-88 TABLE OF PERMITTED USES AND SPECIAL USES OF THE CITY CODE OF ORDINANCES; REPEALING SECTION 98-88 IN ITS ENTIRETY AND ADOPTING THE LANGUAGE HEREIN, PROVIDING A SEVERANCE CLAUSE AND TEXAS OPEN MEETINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.
- 5.** Call for City Council Workshops for the Remainder of 2023

6. Discussion Regarding the City of Montgomery and Montgomery County Interlocal Governmental Agreements for the Town Creek Bridge and Lonestar Parkway Buffalo Springs Intersection Improvements
7. Consider Removal of Montgomery Economic Development Committee Director/President

**EXECUTIVE SESSION:**

Adjourn into Closed Session in compliance with Section 551.01 etseq. Texas Government Code, to wit:

Sections **551.071** (consultation with attorney: Redbird Meadows Development Agreement)

**551.072** (deliberation regarding real property)

**POSSIBLE ACTION FROM EXECUTIVE SESSION:**

Consideration of any action taken in Closed Session.

**COUNCIL INQUIRY:**

Pursuant to Texas Government Code Sect. 551.042 the Mayor and Council Members may inquire about a subject not specifically listed on this Agenda. Responses are limited to the recitation of existing policy or a statement of specific factual information given in response to the inquiry. Any deliberation or decision shall be limited to a proposal to place on the agenda of a future meeting.

**ADJOURNMENT**

/s/ Nici Browe

Nici Browe, City Secretary. TRMC

I certify that the attached notice of meeting was posted on the bulletin board at City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas, on June 9, 2023 at 4:00 p.m. I further certify that the following news media was notified of this meeting as stated above: The Courier

---

*This facility is wheelchair accessible and accessible parking spaces are available. Please contact the City Secretary's office at 936-597-6434 for further information or for special accommodations.*

---

**City Council Regular & Board of Adjustment Meeting  
MINUTES**

**May 9, 2023, at 6:00 PM**

**CALL TO ORDER**

Mayor Byron Sanford called the meeting to order at 6:00 p.m.

Present:	Byron Sanford	Mayor
	Carol Langley	City Council Place #1
	Casey Olson	City Council Place #2
	T.J. Wilkerson	City Council Place #3
	Cheryl Fox	City Council Place #4
	Patricia Easley	City Council Place #5
Also Present:	Gary Palmer	City Administrator
	Nici Browe	City Secretary & Director of Administrative Services

**CALL TO ORDER**

Mayor, Byron Sanford called the meeting to order at 6:00 P.M.

**INVOCATION**

Mayor Pro Tem, T.J. Wilkerson provided the Invocation.

**PLEDGE OF ALLEGIANCE TO FLAGS**

**ANNOUNCEMENTS**

1. Recognition of outgoing Councilmember TJ Wilkerson.

Mayor Byron Sanford presented Councilmember TJ Wilkerson with a plaque and flag in recognition of his dedication and service to the City of Montgomery during his term on City Council.

2. Presentation of Proclamation by Mayor designating the week of May 21-27, 2023 as "National Public Works Week".

Mayor Byron Sanford presented Eric Standifer of Public Works a proclamation in recognition of Public Works First Responders Week.

**VISITOR/CITIZENS FORUM:**

Ms. Sara Countryman requested that she discuss her concerns at the time of the item #6 being presented.

**CONSENT AGENDA:**

3. Approval of the following:
  - (a) revised City Council meeting minutes of 04-11-2023.
  - (b) City Council and Board of Adjustment meeting minutes 04-25-2023.

Councilmember Carol Langley moved to approve the consent agenda as presented. Councilmember Cheryl Fox seconded the motion. **Motion Passed (5-0).**

**CONSIDERATION AND POSSIBLE ACTION:**

3. Presentation of the Annual Financial Report and Audit from Belt Harris Pechachek, LLLP.

Ms. Darla Dear, Auditor presented to Council the City's Financial Audit results. She began by thanking Nici, Dave and Gary for all of their assistance in providing the documentation that had been requested in order to complete the audit.

She addressed the council and instructed them to review page 1. As this is the "opinion page" and out of the entire packet is the most important page. The Auditors issued the city with an "unmodified opinion" which is a great opinion. She reviewed pages 24 and 25 which was the revenue and expenditure and stated the City had an ending fund balance of \$2,5154 million which is an excellent job. Most government entities should be looking to keep a minimum of 25% in the fund balance to cover three months of operating expenses, the city is running at 38%.

She stated that on Page 67 you can see that the city came in under budget by \$446,000.00.

Ms. Dear concluded her presentation and requested any questions from the council.

Council did not ask any questions.

4. Consideration and possible action by the City Council acting as the Zoning Board of Adjustment on a revised variance request to Section 98-122 of the City Code of Ordinances related to rear yard requirements for 128 Dina Lane.

Mr. Dave McCorquodale informed the council that this item is a revised request, the applicant has complied with the conditional recommendations from Planning & Zoning and has supplied a drainage plan, and there is a 5 ft. encroachment. Staff are recommending approval of the variance for a 5ft encroachment, and no raised beds and or decking.

Councilmember Casey Olson moved to approve the variance as presented along with the conditions of the submitted drainage plan and no raised beds or decking. Councilmember Cheryl Fox seconded the motion. Motion Passed (5-0).

5. Receive the Final Report from the Planning & Zoning Commission on a rezoning request for 14640 Liberty Street, Montgomery, Texas from R1-Single Family Residential to B-Commercial as submitted by Evan Ballew and convene into a Public Hearing for the purpose of allowing interested parties to be heard.

Mr. Dave McCorquodale presented this item and informed the council that the recommendation of the Planning & Zoning Commission is not to rezone the property as requested. Tonight, is the Public Hearing which is a legal requirement for any rezoning request.

Mayor Byron Sanford opened the public hearing at: 6:22 P.M.



**\*\*Audio from the podium is at time distorted**

**Sara Countryman, resident** stated that she had been doing her research last week and wanted to bring a few things to light. The State Law in the State of Texas says that the Specific Use Permit (SUP) is not a tool for circumventing the table of uses. Currently, today the house is zoned R = Residential and that means it is residential as someone should be living in that house, continues as R zoning and to be considered for Special Use there has to be a requirement such as ‘home occupation’, for that.

She went on to state that our city codes have those standards spelled out and, in the Planning & Zoning meeting, although they voted “no” staff did not go through the items (“which I have here”) A through G of what the requirements are, the homeowner said he wanted to do just inside and outside paint and add parking. According to item G on the Code of Ordinances those *(audio distorted)* done.

Ms. Countryman continued that he (homeowner) wasn’t advised differently, and she doesn’t know if staff is aware or fully understands what is being done and that the conditions are of home occupancy and what the conditions are for a special use permit. Spot Zoning is not in our City Code and not like Harris County where you can have residential, industrial and convert from residential to commercial. That area according to the current Adopted 2018 Zoning map is zoned residential. She noticed in the P&Z packets there was a map and Merriam Walker bought it up as well it shows it to be “Future Commercial”, that has never been and is a “pie in the sky” idea by the former administrator Jack Yates in 2015, it has never been adopted. The fact that was bought up as a possibility makes her feel like the staff is hoodwinking or directing people to do something as he thinks that the council will approve a Special Use Permit. She wonders if we are advising correctly.

Ms. Countryman went on to add that P&Z accepted this zoning in 2018 on a 9/24/2018 meeting item no. 6, on page 74 there is a map, that’s the map that should have been presented to the owner and as she has mentioned some of these homes don’t have titles and deeds, so turning them into commercial property is a pipe dream.

**Julie Dennison, resident**

stated that she is against the property being zoned commercial as firstly its in her back yard and they purchased their home as a forever home. The house in question was built as a home and that is the way it needs to stay. If you let this gentleman, go commercial in it, then the next one and next one after that and you will end up with a strip there which will sit vacant and its going to cause rats, dumpsters would be placed there and who knows what types of businesses would go in the other places.

Ms. Dennison continued by stating that when they purchased their home, they were told it was residential and that it would all stay residential, she understands there are deed problems but feels that could all be resolved pretty easily. She reiterated that she is against this commercial application.

She went on to say she is sorry the gentleman has put a lot of money into the place, it was built as a home, he knew it was a home and he should have checked everything out before he placed his business in there to start with. She wants it to remain residential as it could ruin their property values.

**Evan Bellew, property owner** introduced himself and stated he had been here in town for 25 years, and he had opportunities to take his business to other local cities, and recognizes that is no one’s problem but his, but he did want to have his business where he lives, although not “in” but right on the outside and wants to continue to contribute to the city as he has previously worked at the Montgomery Fire Department and is now at the Magnolia Fire Department.

Mr. Bellew stated he truly wanted a place for his business to go in and based on the city’s future land use plan maps which he found on his own accord and researched through the city’s website, he had communicated with staff on other properties he has which has been impacted by the city’s

infrastructure, staff have been very helpful on that, he has tried to follow due process and whatever decisions are made here today, he is open to any available options.

Councilmember Carol Langley inquired if Mr. Bellew had purchased the property.

Mr. Bellew confirmed that he had.

Mayor Sanford closed the public hearing at 6:29 P.M.

Councilmember Casey Olson stated he has a question on the zoning maps that he has in front of him.

Mr. McCorquodale inquired if he has questions about the differences between the zoning map and future land use map.

Councilmember Casey Olson stated that he has seen a future land use plan, but it was his understanding that it was never adopted.

Mr. McCorquodale responded that the P&Z over the course of ten (10) months in 2017 reviewed the future land use plan with the City Administrator at that time and the City Engineers. In July of that year, they met for a joint workshop (P&Z and City Council) they get all the way to the end and in September/October and the attorneys advised that they were unable to locate in records a current comprehensive plan on file, therefore the city cannot formally adopt the future land use plan. Everyone agrees it is a tool that the city wants to look to the future with.

Mr. McCorquodale continued that in October at the Planning & Zoning Commission meeting Bill Simpson moved to approve the future land use plan and recommended approval of it to City Council, amended the motion to include it with any future comprehensive plan updates that may occur, it was a unanimous vote and Ms. Carol was one of them.

He added that is the history and it is an unofficial guide and as he told the owner Mr. Bellew, he cannot tell you this is what they are for sure going to do, but it is a tool that gives us a little bit of a view. Again, it wasn't formally adopted and wasn't included in the comprehensive plan, the city spent the better part of a year with staff and consultants developing it. He concluded that it should be looked at. He feels it could use an update, it certainly wasn't a pipe dream or never saw the light day kind of thing.

Councilmember Patricia Easley inquired if it had gone through the rezoning process, with notification of the neighbors?

Mr. McCorquodale responded that it had and published the notice in the paper and said that he is there to do one main thing a rezone applicant in our city, that we as a city follow state law and the applicant has met all the requirements on the way to you.

Councilmember TJ Wilkerson inquired that if it is zoned commercial would it affect the neighbors tax base.

Mr. McCorquodale responded that it will not, he had spoken with the County several years ago when he took on a rezoning project when he first joined staff. They advised him that if land is vacant, the county is going to use our zoning, so if you a vacant piece of property zoned commercial that is the way you are going to be taxed Vacant being no structure on the land.

Therefore, with this it would not affect the surrounding properties.

Councilmember Patricia Easley inquired if they had considered a Special Use Permit (SUP).

Mr. McCorquodale responded that he had discussed that at planning and zoning and ran it by the attorneys and was advised it certainly is a tool available to use, that would allow you to change the use to professional only, or some type of office space, and if you wanted any parking restrictions, landscaping etc. then an SUP would do that.

Councilmember Patricia Easley stated that she felt part of the concern if and when he sells the property and as it is then zoned commercial how could the city prevent a service station going in.

That is why P&Z couldn't ultimately approve it to rezone commercial as it could then be any business within the permitted uses.

Alan Petrov, City Attorney reminded council that they are not discussing an SUP this evening, this is a question do you approve a rezoning request to commercial.

Councilmember Cheryl Fox inquired if he had received any other resident's opposition.

Mr. McCorquodale responded that he had been provided with notice from a relation of a resident, who was serving in the military and was not in favor of the rezone request.

Councilmember Carol Langley inquired what size is the property.

Mr. Bellew responded that it is 200 ft long and 125 ft wide. He also stated that after participating in the rezoning process it is questionable that on the application there is a box that asks does this meet the city's future land use plan. Somewhat confusing. To address Councilmember Wilkerson's point, the property is already appraised at half a million dollars, the buffalos' springs area is what is driving it up. He concluded by stating that if he didn't care for the neighbors he wouldn't be there.

Councilmember Carol Langley stated that she knows in her mind that commercial on 149 will come someday, is this the day? Probably not. There are a lot of problems in that area with regard to titles.

Councilmember Carol Langley moved to accept the final report as presented. Councilmember Cheryl Fox second the motion. **Motion Passed (5-0).**

7. Consideration and possible action on AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS AMENDING THE ZONING CLASSIFICATIONS AS DEFINED IN THE CITY CODE OF ORDINANCES CHAPTER 98, "ZONING," FOR A 0.57-ACRE TRACT SITUATED IN THE JOHN CORNER SURVEY, ABSTRACT NUMBER 8, TRACT 16, MONTGOMERY COUNTY, TEXAS COMMONLY REFERRED TO AS A PORTION OF 14640 LIBERTY STREET, MONTGOMERY COUNTY, TEXAS FROM "R-1" SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT, AS FOUND ON THE CITY'S OFFICIAL ZONING MAP TO "B" COMMERCIAL ZONING DISTRICT CLASSIFICATION; AND TO AMEND THE OFFICIAL ZONING MAP; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE UPON PASSAGE AND PUBLICATION.

Mr. Dave McCorquodale informed the council that this is the ordinance which relates to item No:6 and staff is recommending to not approve or move to deny it.

Councilmember Casey Olson moved to deny the ordinance for the rezoning application. Councilmember Carol Langley seconded the motion. **Motion Passed (5-0).**

#### **EXECUTIVE SESSION:**

Adjourn into Closed Session in compliance with Section 551.01 etseq. Texas Government Code, to wit:

Sections 551.071 (consultation with attorney: Redbird Meadows Development Agreement)

**Council convened into Executive Session at 6:44 P.M.**

**Council reconvened into Regular Session at 7:05 P.M.**

**POSSIBLE ACTION FROM EXECUTIVE SESSION:**

Consideration and possible action on matters deliberated in Closed Executive Session.

No motion was made from executive session.

**COUNCIL INQUIRY:**

There were no items for Council Inquiry.

Councilmember Carol Langley moved to adjourn the meeting. Councilmember Cheryl Fox seconded the motion. **Motion passed (5-0).**

**ADJOURNED: 7:05 P.M.**

Submitted by: \_\_\_\_\_  
Nici Browe, City Secretary

Date Approved: \_\_\_\_\_

\_\_\_\_\_  
Byron Sanford, Mayor

**City Council Workshop  
MINUTES**

**June 05, 2023, at 6:00 PM**

**CALL TO ORDER**

Mayor Byron Sanford called the meeting to order at 6:00 p.m.

Present:	Byron Sanford	Mayor
	Carol Langley	City Council Place #1
	Casey Olson	City Council Place #2
	Sara Countryman	City Council Place #3
	Cheryl Fox	City Council Place #4
	Stan Donaldson	City Council Place #5

Absent:

Also Present:	Gary Palmer	City Administrator
	Nici Browe	City Secretary & Director of Administrative Services

**CALL TO ORDER**

**INVOCATION**

Mayor Byron Sanford provided the invocation.

**PLEDGE OF ALLEGIANCE TO FLAGS**

**VISITOR/CITIZENS FORUM:**

No members of the public addressed City Council in this workshop.

**WORKSHOP ITEM:**

1. Workshop on the proposed Mobile Food Unit/Mobile Food Court text amendments to Chapter 64 Peddlers, Solicitors, Vendors of the City Municipal Code AND Zoning Ordinance Section 98-88 Table of Permitted Uses and Special Uses.

History

Mr. Gary Palmer introduced the item, provided a little background to the discussion points on this subject matter to date and provided the council with packets that include the ordinance with strikeouts, redlines etc., and the tables of permitted uses.

Amendment Process

Mr. Palmer informed the Council that he had taken the Ordinance redlines to the Planning & Zoning on April 11, 2023, and they called a public hearing. He added that he went through the entire ordinance with the commission, and it was their recommendation to approve it. The motion read: The planning and Zoning Commission recommends approval of the amendments.

Mr. Palmer continued his presentation of the ordinance amendments with the aid of a power point slide show.

### Main changes

He went on to say that it would be fair to say that the last time the council and he met on this subject matter the fees were the sticking point, therefore he looked at the state law, other cities and the best practices and look at what we can regulate and capture those things for our ordinance. He stated that they have removed some regulatory in nature items that would then allow staff to have the latitude to work with the applicant and come up with the best or alternative options for them, maybe its that staff can recommend another area, specifically when dealing with the downtown area.

### Exemptions

Mr. Palmer read through the exemptions.

Councilmember Casey Olson discussed the definition of an Ice cream Truck and stated he would like to see language added that it is “moving/mobile” with a time limitation for standing in one location.

Mr. Palmer agreed and stated he would find the suitable language to place in the ordinance.

Mr. Palmer pointed out that item (c) is a change from the last time the council saw the ordinance. He read through the proposed exemption “*Mobile food units operating as an accessory use to a Primary food establishment located on the same property, or property contiguous with the property that contains the primary food establishment. Products distributed by a mobile food unit under this subsection must be produced by the onsite primary food establishment.*” He then asked for the council’s thoughts.

Councilmember Stan Donaldson commented that the reason a local vendor (Inaudible) parked their mobile unit on the same location as the primary business is due to the fact, he is lacking in staff to take the vehicle.

Councilmember Sara Countryman commented that if you were to take Hodge Podge as an example and if they were to have a food truck in their property and is part of their establishment then she does not feel it should be a problem.

Councilmember Cheryl Fox commented that she agreed that if the mobile unit is part of the business, it is not going to be a problem.

Councilmember Carol Langley commented that it does need to be clear that it should be on the principal business.

Councilmember Sara Countryman questioned who would let City Hall know if they were not part of the primary food establishment.

Mr. Palmer responded that it would be part of the Code Enforcement Officers duties to go around and review those in operation. He then stated that he would go ahead and make that change.

### Location

Mr. Palmer informed the council that the table states that mobile food units are permissible in the Commercial District, Industrial District and Institutional District. He pointed out that they are NOT permitted in residential areas and are only permitted in the Historic District with a special variance (special use process) and food courts are not permitted.

Mr. Palmer went on to add that he has cleaned up the language and will have a cleaner application in order for the process and requirements to be very clear.

Councilmember Sara Countryman inquired if the applicant could obtain a special use PRIOR to them purchasing the property.

Mr. Palmer responded they could, that is a decision up to the applicant.

Ms. Countryman stated that if someone wanted to purchase a property with the intent of having a food truck within their location, surely it would make sense to have the approval before going ahead and purchasing the property.

Mr. Palmer then explained the process for a Special Use Permit, being heard and approved by both the Planning & Zoning Commission as well as the City Council.

### Fees

Mr. Palmer stated that he has revised the fees and is proposing a flat fee of \$600.00 for a 6-month permit, this then is fair when it comes to our brick-and-mortar businesses ensures those that come and pay the fee have a vested interest in the city, logistically it wont overburden the staff with numerous permits.

The council collectively held a brief discussion on the food truck(s) that rotate through on the Jims parking lot.

Councilmember Carol Langley stated that Jims has a list of food trucks that are coming through the summer. She feels \$600 is too high.

Councilmember Casey Olson disagreed and said that they should be able to afford \$100 for one month then, maybe we offer up it per month.

Councilmember Carol Langley responded that if they can't show up for some reason they have paid.

Councilmember Casey Olson stated that he had looked at the lowest sales tax provider and the highest tax provider in the downtown area and averaging it out \$1200 would be fair, so \$600 is more than fair.

Councilmember Carol Langley stated they have to be here to make the money, to pay for that permit, and they could be in other places instead.

Councilmember Casey Olson stated we cannot discriminate against people who have invested thousands in the city of Montgomery with their permanent businesses.

Councilmember Carol Langley responded that she doesn't want the city to run people out due to the high price of a permit.

Councilmember Sara Countryman suggested maybe the city look at a day pass or something similar, in which the owner of the property pays.

Councilmember Casey Olson stated that wouldn't work as you are taking from the businesses to have them come in.

Mr. Palmer stated that if the council preferred, they could chew over the fees a little more.

Councilmember Sara Countryman suggested that one scenario is that we offer a summer pass, then if we get too many, we can look at making another amendment later at that time.

Councilmember Casey Olson remained firm that \$25.00 a weekend is reasonable.

Councilmember Cheryl Fox inquired about when AA Plants have their special events, how would that work with the food truck ordinance amendment.

Mr. Palmer and Chief Anthony Solomon responded that \$25.00 is paid to the city where it goes through multiple layers of approvals and reviews. We have to check each application; this will cover all of the staff costs. Mr. Palmer said something to look at is maybe a week, weekend, month and or day pass/permit.

Mr. Palmer added that he would look at other cities and come up with suitable language for fees and stated he had added some requirements to the application process too.

Councilmember Casey Olson suggested that the charity issue, we need to see proof of their charity status.

Mr. Palmer stated he would also add an appeal process to the application.

Councilmember Stan Donaldson asked how when someone gets a permit for a week, how do we define those dates.

Councilmember Casey Olson responded that it would be Monday midnight to Sunday midnight, and it would be up to code enforcement to check and move on those whose permits have expired.

Next Steps

Mr. Palmer asked if the council had any questions that would warrant another workshop and that he would make the changes recommended tonight.

Councilmember Casey Olson said with those he would be ready to vote on it on Tuesday. Councilmember Sara Countryman and Mayor Sanford agreed they too would be ready.

**ADJOURNMENT**

Councilmember Casey Olson moved to adjourn the meeting. Councilmember Sara Countryman seconded the motion. **Motion passed (5-0).**

**ADJOURNED: 6:40 P.M.**

Submitted by: \_\_\_\_\_  
Nici Browe, City Secretary

Date Approved: \_\_\_\_\_

\_\_\_\_\_  
Byron Sanford, Mayor



Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date:</b> May 23, 2023	<b>Budgeted Amount:</b> N/A
<b>Department:</b> Admin	<b>Prepared By:</b> Dave McCorquodale

**Subject**

Consideration and possible action on calling a Public Hearing related to a Special Use Permit application for 14640 Liberty Street as submitted by Evan Ballew.

**Recommendation**

Motion to call the Public Hearing for July 11, 2023 at 6:00 pm.

**Discussion**

As you are aware, the rezoning request of this property from R1-Single Family Residential to B-Commercial was not approved by City Council last month. The property owner has submitted a Special Use Permit application to request that the property be used as a real estate office without changing the underlying zoning.

The SUP process is similar to the rezoning process—P&Z makes a recommendation to City Council, who approves or denies the request. The first step for City Council is to call a Public Hearing. Staff will publish legal notice in the newspaper as required by our city code and state law. In addition, staff will mail a letter to property owners within 200-feet to notify them of the request and hearing details.

**Approved By**

Assistant City Administrator & Planning & Development Director	Dave McCorquodale	Date: 06/02/2023
City Administrator	Gary Palmer	Date: 06/02/2023



# Special Use Permit

City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316  
(936) 597-6434

**Upon completion return application to [dmccorquodale@ci.montgomery.tx.us](mailto:dmccorquodale@ci.montgomery.tx.us)**

**Contact Information**

Property Owner(s): Evan Ballew

Address: 2470 N. Mt. Mariah Rd Montgomery, TX

Zip Code: 77356 Phone: (936)581-9959

Email Address: evan@evanballewgroup.com

Applicants: Evan Ballew - The Evan Ballew Group, LLC

Address: 14640 N. Liberty St. Montgomery, TX

Zip Code: 77356 Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Parcel Information**

Type of Business: Real Estate Office

Legal Description: \_\_\_\_\_

Street Address or Location: 14640 N. Liberty St. Montgomery, TX 77356

**Special Use Permit Request**

Description of request:

Request permission to operate a professional business at this location, zoned Residential. Improvements to site may include exterior paint, signage, and parking.

**Submission Information**

This application is to be submitted to the City of Montgomery Director of Planning & Development:

City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316

**Additional Information**

Date Application received by the City of Montgomery: \_\_\_\_\_

Owner(s) of record for the above described parcel: \_\_\_\_\_

Owner(s) of record for the above described parcel:

Signature:  Date: 5/12/23

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*Note: Signatures are required for all owners of record for the property proposed for Special Use Permit. Attach additional signatures on a separate sheet of paper.*

<p><b>Date Received</b> <i>Office Use</i></p>	
---	--

# PLANNING & ZONING COMMISSION REPORT OF FINDINGS AND RECOMMENDATION

TO: MONTGOMERY MAYOR AND CITY COUNCIL

FROM: PLANNING & ZONING COMMISSION

CC: GARY PALMER, CITY ADMINISTRATOR

SUBJECT: REPORT CONCERNING A SPECIAL USE PERMIT APPLICATION BY EVAN BALLEW TO REQUEST A "B"-COMMERCIAL LAND USE AT 14640 LIBERTY STREET, AN "R1"-SINGLE FAMILY RESIDENTIAL ZONING DISTRICT.

Mayor and Members of City Council,

Pursuant to Sections 98-27(a) of the City of Montgomery Code of Ordinances ("the Code"), the Montgomery Planning and Zoning Commission met on June 6, 2023 to consider a request from Evan Ballew for a Special Use Permit to use the property and existing structure at 14640 Liberty Street Montgomery, Texas 77356 for professional (real estate) office space.

After study, the Commission at its June 6<sup>th</sup> meeting thereby found:

- The property is currently designated with the zoning classification of R1-Single Family Residential.
  - The proposed use, professional office space, is allowed by right only in a B-Commercial zoning district.
  - Parking requirements were considered and the Commission found that \_\_\_\_\_.
  - "USE" IS IN LINE WITH COMMERCIAL \_\_\_\_\_.
  - LICENSE WOULD RUN WITH THE OWNER \_\_\_\_\_.
- [add points considered relevant to the request or property)

By a vote of 3-1, the Planning and Zoning Commission hereby presents this Report pursuant to Section 98-27(a) of the Code, recommending approval / ~~denial~~ of the Special Use Permit. City Council can require conditions for the Special Use Permit, ~~none~~ / the following are recommended by the Commission:

- ESTABLISH COMMERCIAL / RESIDENTIAL BUFFER.
- BUILDING WITHIN SETBACK IS OK TO STAY.
- \_\_\_\_\_.

[list any conditions deemed appropriate]

I, Jeffrey Waddell, Chairman of the Montgomery Planning and Zoning Commission, on this 6<sup>th</sup> day of June 2023, certify the above Final Report to be true and correct to the best of my knowledge.

Signed:   
JEFFREY WADDELL, Chairman

Attested:   
NICI BROWE, TRMC, City Secretary



Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date:</b> June 13, 2023	<b>Budgeted Amount:</b> N/A
<b>Department:</b> Administration	<b>Prepared By:</b> G. Palmer

**Subject**

Consideration and possible action on: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING CHAPTER 64 PEDDLERS, SOLICITORS AND VENDORS OF THE CITY CODE OF ORDINANCES; REPEALING CHAPTER 64 IN ITS ENTIRETY AND ADOPTING THE LANGUAGE HEREIN, PROVIDING A SEVERANCE CLAUSE AND TEXAS OPEN MEETINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

**Recommendation**

Approve the amendment to the City of Montgomery Municipal Code by repealing Chapter 64 in its entirety and adopted the proposed amended Chapter 64 as proposed

**Discussion**

In your packets please find the “redline” and “clean” versions of Chapter 64. All text in red are additions to the current ordinance and all red strikethroughs are deletions to the current ordinance. The “clean” version is the final edited version and ready for adoption.

The Council reviewed the proposed amendments at workshops on April 11, 2023 and June 05, 2023. Comments/edits from the workshops have been included in the “clean” version.

The P&Z was presented with the proposed amendments on April 04, 2023. They subsequently held a public hearing on May 02, 2023, and recommended approval. I have included the P&Z Commission recommendation and meeting minutes.

<b>Approved By</b>		
		Date:
City Administrator	Gary Palmer	Date: June 07, 2023

**ORDINANCE NO. 2023 - XX**

**Consideration and possible action on: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING CHAPTER 64 PEDDLERS, SOLICITORS AND VENDORS OF THE CITY CODE OF ORDINANCES; REPEALING CHAPTER 64 IN ITS ENTIRETY AND ADOPTING THE LANGUAGE HEREIN, PROVIDING A SEVERANCE CLAUSE AND TEXAS OPEN MEETINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Montgomery, Texas (the "City Council") desires to safeguard the health, safety and general welfare of the City of Montgomery, Texas (the "City") and its citizens;

**WHEREAS**, The City Council is responsible for the orderly development and regulation of activities within the City;

**WHEREAS**, The City Council desires to further regulate and clarify the standards for mobile food units (food trucks);

**WHEREAS**, pursuant to the Texas Local Government Code Chapter 51, the City Council may adopt, publish, amend or repeal an ordinance, rule, or police regulation that is for the good government, peace, and order of the City.

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

SECTION 1. The City Council adopts the findings and recitals above as true and correct.

SECTION 2. Chapter 64 of the City Municipal Code is hereby repealed in its entirety and amended by adopting the following:

**Chapter 64 PEDDLERS, SOLICITORS AND VENDORS<sup>1</sup>**

***ARTICLE I. IN GENERAL***

**Sec. 64-1. Purpose.**

The purpose of this chapter is to protect the public health, safety and general welfare of the citizens of the city by providing for controls and regulations of solicitors, vendors, and similar businesses operating within the city.

---

<sup>1</sup>State law reference(s)—Authority to regulate peddlers, V.T.C.A., Local Government Code §§ 51.001 , 215.031 .

---

(Code 2002, § 22-31; Ord. No. 1996-3, art. I, § 1, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-2. Definitions.**

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

*Cottage Food Production Operation* means an individual, operating out of the individual's home, who:

- Produces any of the following at their home:
  - A baked good that is not a time and temperature control for safety food (TCS food)
  - Candy
  - Coated and uncoated nuts
  - Unroasted nut butters
  - Fruit butters
  - A canned jam or jelly
  - A fruit pie
  - Dehydrated fruit or vegetables, including dried beans
  - Popcorn and popcorn snacks
  - Cereal, including granola
  - Dry mix
  - Vinegar
  - Pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less
  - Mustard
  - Roasted coffee or dry tea
  - A dried herb or dried herb mix
  - Plant-based acidified canned goods
  - Fermented vegetable products, including products that are refrigerated to preserve quality
  - Frozen raw and uncut fruit or vegetables
  - Any other food that is not a TCS food
- Has an annual gross income of \$50,000 or less from the sale of the described foods
- Sells the foods produced directly to consumer



- Delivers products to the consumer at the point of sale or another location designated by the consumer

*Display* means to exhibit merchandise in any fashion, including in or upon vehicles, racks, shelves, hangers, or tables or upon the ground.

*Donation and/or recycling vendor* means any organization, entity, or individual engaged in the business of accepting textile or household goods for the purpose of reselling or donating accepted items.

*Edible goods* means:

- (1) Prepackaged food, including, but not limited to, candy, beverages, and ice cream.
- (2) Prepared food, including, but not limited to, hot dogs, desserts, and pizza.
- (3) On-site prepared food, including, but not limited to, shaved ice, sandwiches, and tacos.

*Food Establishment* means:

(A) A food establishment is an operation that:

(i) stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption, such as a restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending machine location, self-service food market, conveyance used to transport people, institution, or food bank; and

(ii) relinquishes possession of food to a consumer directly, or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises regardless if there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not time/temperature controlled for safety (TCS) foods;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables and/or cottage foods;

(iii) a food processing plant, including one that is located on the premises of a food establishment;

(iv) a cottage food production operation;

(v) a private home that receives catered or home-delivered food

*Hawker* means a peddler who makes noise to advertise his merchandise for sale, either by crying, shouting, ringing of bells or other means. The term "hawking" means to engage in the activities of a hawker.

*Ice cream truck* means a motor vehicle in which prepackaged ice cream, popsicles, ice sherbets or frozen desserts of any kind are sold while traversing city streets. Unless otherwise approved by the City, ice cream trucks in service shall continuously roam and may only stop to service customers. Ice cream trucks shall not solicit services while stationary.

*Merchandise* means goods, wares, services, photographs, magazines, plants, animals, fruit, meat, vegetables or other foods, whether cooked or otherwise, which are not offered for subsequent retail sale.

*Mobile food court* means a land use approved through a Special Use Permit (SEE Sec. 98-27. – Special use permits and Sec. 98-88. – Table of permitted uses and special uses) and developed in conformity with an approved site plan, where two or more mobile food vendors congregate to offer edible goods for sale to the public.

*Mobile food unit/Mobile Food Vendor* means a vehicle mounted, self or otherwise propelled, self-contained food service operation designed to be readily movable and used to store, prepare, display, serve or sell food. The term "mobile food unit/vendor" shall include:

1. Mobile food trucks. A mobile food truck is a self-contained motorized unit selling items defined as edible goods.
2. Concession carts. A concession cart is a self-contained unit that is moved by non-motorized means.
3. Concession trailer. A concession trailer is a self-contained unit that is pulled by a motorized unit and has no power to move on its own.

*Peddler* means a person, including his agents or employees, who goes from person to person, place to place or house to house, and who sells or offers to sell merchandise then in his possession. The term "peddling" means to engage in the activities of a peddler.

*Solicitor* means a person, including his agents or employees, who goes from person to person, place to place or house to house, selling, offering for sale or taking orders for the sale of merchandise not then in his possession, or who requests the gift or donation of money, property, services or any other thing of value. The term "soliciting" or "solicitation" means to engage in the activities of a solicitor.

*Special Event* means a sports event, pageant, celebration, historical reenactment, entertainment, exhibition, parade, fair, festival, or similar activity that is not a demonstration, engaged in by one or more persons, and could potentially impede traffic, impact city infrastructure or operations, and/or disrupt the general public's quiet enjoyment of their day.

*Street* means the entire width between the boundary lines of every way publicly maintained, where any part thereof is open to the use of the public for purposes of vehicular travel, including the ditches, drains, median, sidewalk and esplanade thereof, of any public alley, road, street, avenue, parkway or highway which is located within the city.

*Street festival* means any event, activity or entertainment sponsored by any organization, entity, or individual which may attract 25 or more persons and conducted in whole or in part

within any street and for which admission may be charged or at which peddling, hawking, soliciting, transient dealing, or operation of a mobile food unit may occur. The term "street festival" shall not include a rally conducted in support of or opposition to a candidate for political office or a ballot proposition in any election called by a federal, state or local unit of government.

*Transient dealer* means a person, including his agents or employees, who displays and sells or offers to sell merchandise from a fixed location not upon premises which are owned by the person or for which definite arrangements have been made for the lease, hire or rental for a term of at least one month. The term "transient dealing" means to engage in the activities of a transient dealer.

*Unattended* means without the continuous presence of a person to personally receive and issue receipts for donated items at the time they are deposited at the UDB.

*Unattended donation bin or UDB* means an unattended bin, container, dumpster or similar receptacle that is placed outdoors at a location visible from a public place for the purpose of receiving and/or temporarily storing donated food, clothing, shoes, toys, or other personal property.

(Code 2002, § 22-32; Ord. No. 1996-3, art. I, § 1.2, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-3. Exemptions.**

- (A) The provisions of this article shall not be deemed applicable to persons engaged in interstate commerce or to any such person to whom application of the provisions of this article would impose a direct and unlawful burden on interstate commerce.
- (B) Farm products. Any mobile food unit selling only non-refrigerated farm products in an unrefined state is exempt from this article.
- (C) Mobile food units operating under a valid city-issued Street Festival permit or other Special Event permit.
- (D) Mobile food units operating as an accessory use to a primary food establishment located on the same property that contains the primary food establishment. Products distributed by a mobile food unit under this subsection must be produced by the on-site primary food establishment.
- (E) Cottage food production operations
- (F) Continuously roaming ice cream trucks holding a valid food service permit through the appropriate County Department

(Code 2002, § 22-33; Ord. No. 1996-3, art. I, § 1.3, 6-4-1996; Ord. No. 2020-08, § I, 8-11-2020)

### **Sec. 64-4. Location.**

It shall be unlawful for any person to engage in the business of peddling, hawking, soliciting, transient dealing or mobile food unit operations within any public street or upon any property owned or leased by the city and located within the city that is not a city-designated location and without a valid permit from the city.

Mobile food units may be allowed in the Commercial District (other than the Commercial District with the Historic District Overlay Zone designation SEE City Zoning Map), Industrial District and Institutional District after a mobile food unit permit is issued by the city (SEE Sec. 98-88. - Table of permitted uses and special uses).

Mobile food units may be permitted in the Historic District Overlay Zone and any other Zoning District in which mobile food units are not a allowed only after approval through the Special Use process and subsequently a mobile food unit permit issued by the city (SEE Sec. 98-27. - Special use permits).

(Code 2002, § 22-34; Ord. No. 1996-3, art. II, § 1, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

#### **Sec. 64-5. Hours of residential solicitation.**

It shall be unlawful for any person, except with the express advance consent of the owner, to enter in or upon any home or residential premises within the city to solicit or to sell or offer to sell merchandise, except between the hours of 10:00 a.m. and 5:00 p.m.

(Code 2002, § 22-35; Ord. No. 1996-3, art. II, § 3, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

#### **Sec. 64-6. Street festivals.**

Street festivals must obtain a permit from the city prior to the use of any public street or upon any property owned or leased by the city. In addition to the requirements of section 64-31, street festival organizers are required to provide a certificate of insurance listing the city as additional insured in an amount established by the city. The organizer of the street festival must maintain and provide to the city a list of all vendors at the event that includes sufficient information for each vendor to comply with the permit application requirements of this chapter.

- (1) Each applicant for a street festival shall be required to file for a permit application, 30 calendar days prior to the event, with the office of the city secretary.
- (2) The fee for street festival permits shall be \$50.00 with a clean-up deposit of \$200.00 that shall be paid prior to the permit issuance.
- (3) The street festival permit applicant shall provide detailed application information including, but not limited to:
  - a. Identify organization conducting the event and event coordinator contact information;
  - b. Include any authorization(s) for use of private property, street locations and/or street closure requests;
  - c. List all activities to be conducted at the event;
  - d. Provide detailed site plan showing how event will be set up;
  - e. Provide date and time of on-site preparation and clean-up after the event;
  - f. If alcohol will be sold, a TABC permit and proof of host liquor liability insurance shall be provided;

- g. If alcohol will be sold and consumed on the street, sidewalk or alley, street festival applicants must meet the requirements of Section 6-57, Alcoholic Beverages, Consumption on the street, sidewalk, or alley.
  - h. If animals or livestock are to be used in conjunction with the event, a handwashing station shall be provided, and the location shown on the site plan; and
  - i. Certificate of insurance listing the city as additional insured.
- (4) Individual vendors operating under a street festival permit are allowed to operate during festival hours.
  - (5) The event coordinator shall provide a detailed list of all participating vendors including contact information.
  - (6) The issuance of the street festival permit may be approved by the city administrator or his/her designee upon review and approval by the police chief or his/her designee.
  - (7) The street festival permit upon approval of the city administrator or his/her designee shall be issued by the city secretary or his/her designee.

(Ord. No. 2020-08 , § I, 8-11-2020; Ord. No. 2021-11 , § 2, 6-22-2021)

**Sec. 64-7. Donation and/or recycling vendors.**

- (a) It shall be unlawful for any organization, entity, or individual to conduct donation and/or recycling business activities on any public street or upon any property owned or leased by the city. Donation and/or recycling locations operating on private property within the city must provide notarized written consent of the property owner to the city in addition to vendor application requirements found in section 64-31.
- (b) Donation and/or recycling locations must be staffed with at least one attendant continuously during operating hours. Donation bins commonly used in industry practices constitute a location of operation. No donation and/or recycling location shall accept donated goods except between the hours of 8:00 a.m. and 8:00 p.m. Location facilities shall be secured during non-operating hours in a manner that prevents unauthorized items from being left on site. Failure to properly secure the facility location to prevent unlawful dumping is grounds for immediate revocation of the vendor permit.

(Ord. No. 2020-08 , § I, 8-11-2020)

**Secs. 64-8—64-28. Reserved.**

**ARTICLE II. PERMIT**

**Sec. 64-29. Required.**

It shall be unlawful for any person to engage in the business of peddling, hawking, soliciting, providing donation and/or recycling services of textiles and household goods, transient dealing, or operation of a mobile food unit within the city without having first obtained a permit to engage in such business.

(Code 2002, § 22-61; Ord. No. 1996-3, art. II, § 2, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

**Sec. 64-30. Classifications; term; fee.**

The following term and fee apply to the class of permit.

No permit shall be issued prior to payment of the fee listed below.

Class	Term & Fee	Term & Fee	Term & Fee
Peddler	----- -----	1 Month - \$100	6 Months - \$600
Hawker	----- -----	1 Month - \$100	6 Months - \$600
Solicitor	----- -----	1 Month - \$100	6 Months - \$600
Transient dealer	----- -----	1 Month - \$100	6 Months - \$600
Mobile food unit	1 week - \$25	1 Month - \$100	6 Months - \$600

(Code 2002, § 22-62; Ord. No. 1996-3, art. II, § 4, 6-4-1996; Ord. No. 2004-14, § 1, 8-24-2004; Ord. No. 2020-08 , § I, 8-11-2020; Ord. No. 2020-13 , § 1, 11-10-2020)

**Sec. 64-31. Application.**

A completed application and all necessary information must be properly submitted to the office of the city secretary not less than ten (10) calendar days prior to the requested commencement of the activity. Each application shall include the following:

- (1) Full name, address, phone number, and email address of the primary applicant. The primary applicant should be the owner/manager of the operation and will be the main point of contact for all issues. If the applicant is a partnership, firm or joint venture, the applicant shall provide the full names, addresses, phone numbers and email addresses of the authorized officers signing the application. If the applicant is a corporation, the applicant shall provide the legal name, DBA, a copy of the corporate documents on file with the TX Secretary of State, and names, phone numbers and

email addresses for all authorized agents for the corporation. A copy of the primary applicant's valid government issued ID must be submitted with the application.

- (2) Detailed written narrative of the requested activity (type of solicitation, location of solicitation, full description of the merchandise to be sold, hours of activity, and any other information required by the city to consider the application). Include how electricity will be provided, how potable water will be provided, how bathrooms for the workers and customers will be provided, and how trash is going to be serviced. Include a statement from the primary applicant describing all criminal convictions and/or civil judgments arising from any State or Federal court within the last ten (10) years. If no convictions or civil judgments, please provide a statement stating same. Include a statement from the primary applicant that the applicant has had no permit issued pursuant to this article revoked in the previous one-year period.
- (3) If the applicant is not the owner of the location in which the service is to be provided, then the applicant shall also provide the lease indicating tenant-ship, or license to use the property, or signed notarized statement from the property owner providing permission to the primary applicant for the use stated on the application.

For mobile food units (in addition to the above):

- Proof of business auto liability insurance covering the mobile food vending unit
- Sales tax number with a copy of the sales tax permit
- Copy of the Montgomery County Health Department food service permit
- A detailed sketch plan illustrating all components of the activity and exact location to any other buildings, parking lots, and all businesses within 100' of the proposed activity location. If applicable, location of trash receptacles, bathrooms, parking area, and seating area
- A detailed narrative of how electricity will be provided, how potable water be provided, how bathrooms for the workers and customers will be provided, and how trash is going to be serviced
- A description or photo of the vehicle/trailer/cart being used for the mobile food unit
- Mobile food unit license plate number and VIN
- An illustration of all proposed signage and lighting related to the activity

(Code 2002, § 22-63; Ord. No. 1996-3, art. II, § 5, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020; Ord. No. 2020-13 , § 1, 11-10-2020)

**Sec. 64-32. Exceptions; charities; public well-being; limited duration activities.**

- (a) Notwithstanding any provision to the contrary contained in this article, no permit fee shall be charged under section 64-30, with respect to the following:

- 
- (1) Any charitable institution, organization or association organized and conducted exclusively for charitable purposes, and not for private gain or profit.
  - (2) Any individual, association, organization or other entity conducting or staging any concert, exhibition, lecture, entertainment or dance where the gross profits derived therefrom are used solely for charitable or benevolent purposes and not for the purpose of private gain or profit.
  - (3) Any organization, association or other entity holding any convention in the city and sponsoring any entertainment, dance, concert, exhibition, lecture or other event directly and exclusively connected with such convention, provided that any proceeds realized from such convention are devoted to the purposes of the entity sponsoring the same and are not for the purpose of private gain or profit of any individual or entity.
  - (4) Any service club or organization, such as Kiwanis, Rotary or Lions Clubs, nonprofit automobile clubs, chambers of commerce, trade associations, manufacturers' associations, labor organizations, and similar community or professional service clubs or organizations which do not contemplate the distribution of profits or dividends to the members thereof.
- (b) Any person, association, organization or other entity claiming an exemption as provided in subsection (a) of this section, shall provide such documentation and/or other evidence as may be required by the city secretary to substantiate and confirm the exempt status of such person, association, organization or other entity.
  - (c) All other applicable provisions of this article shall pertain to and be applicable to any such exempted persons, associations, organizations or other entities.
- (Code 2002, § 22-63.1; Ord. No. 2004-14, § 2, 8-24-2004; Ord. No. 2020-08 , § I, 8-11-2020)

**Sec. 64-33. Special requirements for mobile food units.**

- (a) Each permit for operation of a mobile food unit shall be conditioned upon continuous compliance with all federal, state, and local laws or rules adopted under such laws relating to food service, and the permittee shall at all times prominently display a current food service permit issued by the county health department.
- (b) Each permit for operation of a mobile food unit shall be conditioned upon continuous compliance with the following:
  - (1) Each driver or operator of a mobile food unit shall maintain financial responsibility as required by the Texas Motor Vehicle Safety Responsibility Act, V.T.C.A., Transportation Code Ch. 601 ;
  - (2) No sales shall be made on any street or roadway where posted speed limits are in excess of 30 miles per hour;
  - (3) No person shall sell or solicit sales of merchandise from a mobile food unit within 1,000 feet of any public or private school between the hours of 9:00 a.m. and 5:00 p.m.;



- 
- (4) No person shall sell or solicit sales of merchandise from a mobile food unit except between the hours of 9:00 a.m. and 9:00 p.m. unless operating under a street festival permit in accordance with section 64-6; and
  - (5) The permit issued pursuant to this article shall at all times be conspicuously posted upon the mobile food unit.

(Code 2002, § 22-64; Ord. No. 1996-3, art. II, § 6, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

**Sec. 64-34. Granting or denial; issuance; transfer.**

Within ten days of receipt of an application for a permit required by this article, the city secretary, upon finding the application and all submitted materials complete, may grant such application and issue the permit and identification badges required by this article or such application shall be deemed denied. The city secretary shall grant any application which on its face complies with the provisions set forth in section 64-31 and, if applicable, section 64-33, and shall deny any application which fails to meet such requirements. Upon written request of the applicant, the city secretary shall set forth in writing the reasons for the denial of any permit. If granted, the city secretary shall issue to the applicant a permit which shall set forth the permit number, the activity permitted, the effective and expiration dates of the permit and the name of the person to which the permit has been granted, and the name of each person authorized to engage in the permitted activity. No permit shall be assignable.

(Code 2002, § 22-65; Ord. No. 1996-3, art. II, § 7, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

**Sec. 64-35. Revocation.**

- (a) Any permit issued pursuant to this article may be revoked by the city secretary if he/she determines that such permit was obtained upon the basis of any intentional false material misrepresentation by the applicant, upon any conduct by the permittee, his agents or employees which arises from or is directly related to the permitted activity and which conduct is a violation of criminal statute, or upon violation by the permittee, his agents or employees of any term or provision of such permit or of this article.
- (b) The city secretary may revoke any permit if he/she determines that the permittee, his agents, or employees have committed three or more violations of any term or provision of such permit or of this article within the 12-month period immediately preceding such determination, or at any time upon conviction of a violation of any provision of this article. Prior to any such revocation, the city secretary shall provide the permittee notice of any proposed revocation and the grounds for revocation.

(Code 2002, § 22-66; Ord. No. 1996-3, art. II, § 8, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

**Sec. 64-36. Appeals.**

Any person to whom the city secretary shall have denied a permit or whose permit shall have been revoked under this article may appeal such denial or revocation to an appeal board consisting of the mayor, the city attorney, and the city administrator. Such an appeal shall be made in writing and filed with the city administrator's office not more than five (5) calendar days following such denial or revocation by the city secretary. Within five (5) calendar days of the filing of such appeal, the city administrator shall provide notice of the appeal hearing to the appealing party, which notice shall be sufficient if sent to the email address of such appealing party as shown on the application for the permit. Following such hearing, if the appeal board shall determine that there exist sufficient grounds for denial or revocation of any such permit, then the decision of the city secretary shall be deemed final. If the appeal board shall determine that sufficient grounds do not exist for denial or revocation, then the decision of the city secretary shall be reversed and such permit shall be granted or reinstated.

(Code 2002, § 22-67; Ord. No. 1996-3, art. II, § 9, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect any of the remaining provisions of this Ordinance.

SECTION 4. All other ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this Ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this Ordinance on all ordinances or sections of the City Code not specifically amended or repealed shall remain in full force and effect.

SECTION 5. It is hereby officially found and determined that the meeting at which this Ordinance was considered 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 Open Meetings Act, Chapter 551, of the Texas Government Code.

SECTION 6. This Ordinance shall take effect immediately upon its passage and adoption.

**PASSED AND APPROVED** by the City Council of the City of Montgomery, Texas on the 13th day of June 2023.

\_\_\_\_\_  
Byron Sanford, Mayor

ATTEST:

\_\_\_\_\_  
Nicola Browe, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Alan P. Petrov, City Attorney

## Chapter 64 PEDDLERS, SOLICITORS AND VENDORS<sup>1</sup>

### ARTICLE I. IN GENERAL

#### Sec. 64-1. Purpose.

The purpose of this chapter is to protect the public health, safety and general welfare of the citizens of the city by providing for controls and regulations of solicitors, vendors, and similar businesses operating within the city.

(Code 2002, § 22-31; Ord. No. 1996-3, art. I, § 1, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

#### Sec. 64-2. Definitions.

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

*Cottage Food Production Operation* means an individual, operating out of the individual's home, who:

- Produces any of the following at their home:
  - A baked good that is not a time and temperature control for safety food (TCS food)
  - Candy
  - Coated and uncoated nuts
  - Unroasted nut butters
  - Fruit butters
  - A canned jam or jelly
  - A fruit pie
  - Dehydrated fruit or vegetables, including dried beans
  - Popcorn and popcorn snacks
  - Cereal, including granola
  - Dry mix
  - Vinegar
  - Pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less
  - Mustard
  - Roasted coffee or dry tea

---

<sup>1</sup>State law reference(s)—Authority to regulate peddlers, V.T.C.A., Local Government Code §§ 51.001 , 215.031 .

- A dried herb or dried herb mix
- Plant-based acidified canned goods
- Fermented vegetable products, including products that are refrigerated to preserve quality
- Frozen raw and uncut fruit or vegetables
- Any other food that is not a TCS food
- Has an annual gross income of \$50,000 or less from the sale of the described foods
- Sells the foods produced directly to consumer
- Delivers products to the consumer at the point of sale or another location designated by the consumer

*Display* means to exhibit merchandise in any fashion, including in or upon vehicles, racks, shelves, hangers, or tables or upon the ground.

*Donation and/or recycling vendor* means any organization, entity, or individual engaged in the business of accepting textile or household goods for the purpose of reselling or donating accepted items.

*Edible goods* means:

- (1) Prepackaged food, including, but not limited to, candy, beverages, and ice cream.
- (2) Prepared food, including, but not limited to, hot dogs, desserts, and pizza.
- (3) On-site prepared food, including, but not limited to, shaved ice, sandwiches, and tacos.

*Food Establishment* means:

(A) A food establishment is an operation that:

(i) stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption, such as a restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending machine location, self-service food market, conveyance used to transport people, institution, or food bank; and

(ii) relinquishes possession of food to a consumer directly, or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises regardless if there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not time/temperature controlled for safety (TCS) foods;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables and/or cottage foods;

(iii) a food processing plant, including one that is located on the premises of a food establishment;

(iv) a cottage food production operation;

(v) a private home that receives catered or home-delivered food

*Hawker* means a peddler who makes noise to advertise his merchandise for sale, either by crying, shouting, ringing of bells or other means. The term "hawking" means to engage in the activities of a hawker.

*Ice cream truck* means a motor vehicle in which prepackaged ice cream, popsicles, ice sherbets or frozen desserts of any kind are sold while traversing city streets. Unless otherwise approved by the City, ice cream trucks in service shall continuously roam and may only stop to service customers. Ice cream trucks shall not solicit services while stationary.

*Merchandise* means goods, wares, services, photographs, magazines, plants, animals, fruit, meat, vegetables or other foods, whether cooked or otherwise, which are not offered for subsequent retail sale.

*Mobile food court* means a land use approved through a Special Use Permit (SEE Sec. 98-27. – Special use permits and Sec. 98-88. – Table of permitted uses and special uses) and developed in conformity with an approved site plan, where two or more mobile food vendors congregate to offer edible goods for sale to the public.

*Mobile food unit/Mobile Food Vendor* means a vehicle mounted, self or otherwise propelled, self-contained food service operation designed to be readily movable and used to store, prepare, display, serve or sell food. The term "mobile food unit/vendor" shall include:

1. Mobile food trucks. A mobile food truck is a self-contained motorized unit selling items defined as edible goods.
2. Concession carts. A concession cart is a self-contained unit that is moved by non-motorized means.
3. Concession trailer. A concession trailer is a self-contained unit that is pulled by a motorized unit and has no power to move on its own.

*Peddler* means a person, including his agents or employees, who goes from person to person, place to place or house to house, and who sells or offers to sell merchandise then in his possession. The term "peddling" means to engage in the activities of a peddler.

*Solicitor* means a person, including his agents or employees, who goes from person to person, place to place or house to house, selling, offering for sale or taking orders for the sale of merchandise not then in his possession, or who requests the gift or donation of money, property, services or any other thing of value. The term "soliciting" or "solicitation" means to engage in the activities of a solicitor.

*Special Event* means a sports event, pageant, celebration, historical reenactment, entertainment, exhibition, parade, fair, festival, or similar activity that is not a demonstration, engaged in by one or more persons, and could potentially impede traffic, impact city infrastructure or operations, and/or disrupt the general public's quiet enjoyment of their day.

*Street* means the entire width between the boundary lines of every way publicly maintained, where any part thereof is open to the use of the public for purposes of vehicular travel, including the ditches, drains, median, sidewalk and esplanade thereof, of any public alley, road, street, avenue, parkway or highway which is located within the city.

*Street festival* means any event, activity or entertainment sponsored by any organization, entity, or individual which may attract 25 or more persons and conducted in whole or in part within any street and for which admission may be charged or at which peddling, hawking, soliciting, transient dealing, or operation of a mobile food unit may occur. The term "street festival" shall not include a rally conducted in support of or opposition to a candidate for political office or a ballot proposition in any election called by a federal, state or local unit of government.

*Transient dealer* means a person, including his agents or employees, who displays and sells or offers to sell merchandise from a fixed location not upon premises which are owned by the person or for which definite arrangements have been made for the lease, hire or rental for a term of at least one month. The term "transient dealing" means to engage in the activities of a transient dealer.

*Unattended* means without the continuous presence of a person to personally receive and issue receipts for donated items at the time they are deposited at the UDB.

*Unattended donation bin or UDB* means an unattended bin, container, dumpster or similar receptacle that is placed outdoors at a location visible from a public place for the purpose of receiving and/or temporarily storing donated food, clothing, shoes, toys, or other personal property.

(Code 2002, § 22-32; Ord. No. 1996-3, art. I, § 1.2, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-3. Exemptions.**

- (A) The provisions of this article shall not be deemed applicable to persons engaged in interstate commerce or to any such person to whom application of the provisions of this article would impose a direct and unlawful burden on interstate commerce.
- (B) Farm products. Any mobile food unit selling only non-refrigerated farm products in an unrefined state is exempt from this article.
- (C) Mobile food units operating under a valid city-issued Street Festival permit or other Special Event permit.
- (D) Mobile food units operating as an accessory use to a primary food establishment located on the same property that contains the primary food establishment. Products distributed by a mobile food unit under this subsection must be produced by the on-site primary food establishment.
- (E) Cottage food production operations
- (F) Continuously roaming ice cream trucks holding a valid food service permit through the appropriate County Department

(Code 2002, § 22-33; Ord. No. 1996-3, art. I, § 1.3, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-4. Location.**

It shall be unlawful for any person to engage in the business of peddling, hawking, soliciting, transient dealing or mobile food unit operations within any public street or upon any property owned or leased by the city and located within the city that is not a city-designated location and without a valid permit from the city.

Mobile food units may be allowed in the Commercial District (other than the Commercial District with the Historic District Overlay Zone designation SEE City Zoning Map), Industrial District and Institutional District after a mobile food unit permit is issued by the city (SEE Sec. 98-88. - Table of permitted uses and special uses).

Mobile food units may be permitted in the Historic District Overlay Zone and any other Zoning District in which mobile food units are not a allowed only after approval through the Special Use process and subsequently a mobile food unit permit issued by the city (SEE Sec. 98-27. - Special use permits).

(Code 2002, § 22-34; Ord. No. 1996-3, art. II, § 1, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-5. Hours of residential solicitation.**

It shall be unlawful for any person, except with the express advance consent of the owner, to enter in or upon any home or residential premises within the city to solicit or to sell or offer to sell merchandise, except between the hours of 10:00 a.m. and 5:00 p.m.

(Code 2002, § 22-35; Ord. No. 1996-3, art. II, § 3, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

## Sec. 64-6. Street festivals.

Street festivals must obtain a permit from the city prior to the use of any public street or upon any property owned or leased by the city. In addition to the requirements of section 64-31, street festival organizers are required to provide a certificate of insurance listing the city as additional insured in an amount established by the city. The organizer of the street festival must maintain and provide to the city a list of all vendors at the event that includes sufficient information for each vendor to comply with the permit application requirements of this chapter.

- (1) Each applicant for a street festival shall be required to file for a permit application, 30 calendar days prior to the event, with the office of the city secretary.
- (2) The fee for street festival permits shall be \$50.00 with a clean-up deposit of \$200.00 that shall be paid prior to the permit issuance.
- (3) The street festival permit applicant shall provide detailed application information including, but not limited to:
  - a. Identify organization conducting the event and event coordinator contact information;
  - b. Include any authorization(s) for use of private property, street locations and/or street closure requests;
  - c. List all activities to be conducted at the event;
  - d. Provide detailed site plan showing how event will be set up;
  - e. Provide date and time of on-site preparation and clean-up after the event;
  - f. If alcohol will be sold, a TABC permit and proof of host liquor liability insurance shall be provided;
  - g. If alcohol will be sold and consumed on the street, sidewalk or alley, street festival applicants must meet the requirements of Section 6-57, Alcoholic Beverages, Consumption on the street, sidewalk, or alley.
  - h. If animals or livestock are to be used in conjunction with the event, a handwashing station shall be provided, and the location shown on the site plan; and
  - i. Certificate of insurance listing the city as additional insured.
- (4) Individual vendors operating under a street festival permit are allowed to operate during festival hours.
- (5) The event coordinator shall provide a detailed list of all participating vendors including contact information.
- (6) The issuance of the street festival permit may be approved by the city administrator or his/her designee upon review and approval by the police chief or his/her designee.
- (7) The street festival permit upon approval of the city administrator or his/her designee shall be issued by the city secretary or his/her designee.

(Ord. No. 2020-08 , § I, 8-11-2020; Ord. No. 2021-11 , § 2, 6-22-2021)



**Sec. 64-7. Donation and/or recycling vendors.**

- (a) It shall be unlawful for any organization, entity, or individual to conduct donation and/or recycling business activities on any public street or upon any property owned or leased by the city. Donation and/or recycling locations operating on private property within the city must provide notarized written consent of the property owner to the city in addition to vendor application requirements found in section 64-31.
- (b) Donation and/or recycling locations must be staffed with at least one attendant continuously during operating hours. Donation bins commonly used in industry practices constitute a location of operation. No donation and/or recycling location shall accept donated goods except between the hours of 8:00 a.m. and 8:00 p.m. Location facilities shall be secured during non-operating hours in a manner that prevents unauthorized items from being left on site. Failure to properly secure the facility location to prevent unlawful dumping is grounds for immediate revocation of the vendor permit.

(Ord. No. 2020-08 , § I, 8-11-2020)

**Secs. 64-8—64-28. Reserved.**

**ARTICLE II. PERMIT**

**Sec. 64-29. Required.**

It shall be unlawful for any person to engage in the business of peddling, hawking, soliciting, providing donation and/or recycling services of textiles and household goods, transient dealing, or operation of a mobile food unit within the city without having first obtained a permit to engage in such business.

(Code 2002, § 22-61; Ord. No. 1996-3, art. II, § 2, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

**Sec. 64-30. Classifications; term; fee.**

The following term and fee apply to the class of permit.

No permit shall be issued prior to payment of the fee listed below.

Class	Term & Fee	Term & Fee	Term & Fee
Peddler	----- -----	1 Month - \$100	6 Months - \$600
Hawker	----- -----	1 Month - \$100	6 Months - \$600
Solicitor	----- -----	1 Month - \$100	6 Months - \$600
Transient dealer	----- -----	1 Month - \$100	6 Months - \$600
Mobile food unit	1 week - \$25	1 Month - \$100	6 Months - \$600

(Code 2002, § 22-62; Ord. No. 1996-3, art. II, § 4, 6-4-1996; Ord. No. 2004-14, § 1, 8-24-2004; Ord. No. 2020-08 , § I, 8-11-2020; Ord. No. 2020-13 , § 1, 11-10-2020)

### Sec. 64-31. Application.

A completed application and all necessary information must be properly submitted to the office of the city secretary not less than ten (10) calendar days prior to the requested commencement of the activity. Each application shall include the following:

- (1) Full name, address, phone number, and email address of the primary applicant. The primary applicant should be the owner/manager of the operation and will be the main point of contact for all issues. If the applicant is a partnership, firm or joint venture, the applicant shall provide the full names, addresses, phone numbers and email addresses of the authorized officers signing the application. If the applicant is a corporation, the applicant shall provide the legal name, DBA, a copy of the corporate documents on file with the TX Secretary of State, and names, phone numbers and email addresses for all authorized agents for the corporation. A copy of the primary applicant's valid government issued ID must be submitted with the application.
- (2) Detailed written narrative of the requested activity (type of solicitation, location of solicitation, full description of the merchandise to be sold, hours of activity, and any other information required by the city to consider the application). Include how electricity will be provided, how potable water will be provided, how bathrooms for the workers and customers will be provided, and how trash is going to be serviced. Include a statement from the primary applicant describing all criminal convictions and/or civil judgments arising from any State or Federal court within the last ten (10) years. If no convictions or civil judgements, please provide a statement stating same. Include a statement from the primary applicant that the applicant has had no permit issued pursuant to this article revoked in the previous one-year period.
- (3) If the applicant is not the owner of the location in which the service is to be provided, then the applicant shall also provide the lease indicating tenant-ship, or license to use the property, or signed notarized statement from the property owner providing permission to the primary applicant for the use stated on the application.

For mobile food units (in addition to the above):

- Proof of business auto liability insurance covering the mobile food vending unit
- Sales tax number with a copy of the sales tax permit
- Copy of the Montgomery County Health Department food service permit
- A detailed sketch plan illustrating all components of the activity and exact location to any other buildings, parking lots, and all businesses within 100' of the proposed activity location. If applicable, location of trash receptacles, bathrooms, parking area, and seating area
- A detailed narrative of how electricity will be provided, how potable water be provided, how bathrooms for the workers and customers will be provided, and how trash is going to be serviced
- A description or photo of the vehicle/trailer/cart being used for the mobile food unit
- Mobile food unit license plate number and VIN
- An illustration of all proposed signage and lighting related to the activity

(Code 2002, § 22-63; Ord. No. 1996-3, art. II, § 5, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020; Ord. No. 2020-13 , § 1, 11-10-2020)

---

**Sec. 64-32. Exceptions; charities; public well-being; limited duration activities.**

- (a) Notwithstanding any provision to the contrary contained in this article, no permit fee shall be charged under section 64-30, with respect to the following:
- (1) Any charitable institution, organization or association organized and conducted exclusively for charitable purposes, and not for private gain or profit.
  - (2) Any individual, association, organization or other entity conducting or staging any concert, exhibition, lecture, entertainment or dance where the gross profits derived therefrom are used solely for charitable or benevolent purposes and not for the purpose of private gain or profit.
  - (3) Any organization, association or other entity holding any convention in the city and sponsoring any entertainment, dance, concert, exhibition, lecture or other event directly and exclusively connected with such convention, provided that any proceeds realized from such convention are devoted to the purposes of the entity sponsoring the same and are not for the purpose of private gain or profit of any individual or entity.
  - (4) Any service club or organization, such as Kiwanis, Rotary or Lions Clubs, nonprofit automobile clubs, chambers of commerce, trade associations, manufacturers' associations, labor organizations, and similar community or professional service clubs or organizations which do not contemplate the distribution of profits or dividends to the members thereof.
- (b) Any person, association, organization or other entity claiming an exemption as provided in subsection (a) of this section, shall provide such documentation and/or other evidence as may be required by the city secretary to substantiate and confirm the exempt status of such person, association, organization or other entity.
- (c) All other applicable provisions of this article shall pertain to and be applicable to any such exempted persons, associations, organizations or other entities.

(Code 2002, § 22-63.1; Ord. No. 2004-14, § 2, 8-24-2004; Ord. No. 2020-08 , § I, 8-11-2020)

**Sec. 64-33. Special requirements for mobile food units.**

- (a) Each permit for operation of a mobile food unit shall be conditioned upon continuous compliance with all federal, state, and local laws or rules adopted under such laws relating to food service, and the permittee shall at all times prominently display a current food service permit issued by the county health department.
- (b) Each permit for operation of a mobile food unit shall be conditioned upon continuous compliance with the following:
- (1) Each driver or operator of a mobile food unit shall maintain financial responsibility as required by the Texas Motor Vehicle Safety Responsibility Act, V.T.C.A., Transportation Code Ch. 601 ;
  - (2) No sales shall be made on any street or roadway where posted speed limits are in excess of 30 miles per hour;
  - (3) No person shall sell or solicit sales of merchandise from a mobile food unit within 1,000 feet of any public or private school between the hours of 9:00 a.m. and 5:00 p.m.;
  - (4) No person shall sell or solicit sales of merchandise from a mobile food unit except between the hours of 9:00 a.m. and 9:00 p.m. unless operating under a street festival permit in accordance with section 64-6; and

- (5) The permit issued pursuant to this article shall at all times be conspicuously posted upon the mobile food unit.

(Code 2002, § 22-64; Ord. No. 1996-3, art. II, § 6, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-34. Granting or denial; issuance; transfer.**

Within ten days of receipt of an application for a permit required by this article, the city secretary, upon finding the application and all submitted materials complete, may grant such application and issue the permit and identification badges required by this article or such application shall be deemed denied. The city secretary shall grant any application which on its face complies with the provisions set forth in section 64-31 and, if applicable, section 64-33, and shall deny any application which fails to meet such requirements. Upon written request of the applicant, the city secretary shall set forth in writing the reasons for the denial of any permit. If granted, the city secretary shall issue to the applicant a permit which shall set forth the permit number, the activity permitted, the effective and expiration dates of the permit and the name of the person to which the permit has been granted, and the name of each person authorized to engage in the permitted activity. No permit shall be assignable.

(Code 2002, § 22-65; Ord. No. 1996-3, art. II, § 7, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-35. Revocation.**

- (a) Any permit issued pursuant to this article may be revoked by the city secretary if he/she determines that such permit was obtained upon the basis of any intentional false material misrepresentation by the applicant, upon any conduct by the permittee, his agents or employees which arises from or is directly related to the permitted activity and which conduct is a violation of criminal statute, or upon violation by the permittee, his agents or employees of any term or provision of such permit or of this article.
- (b) The city secretary may revoke any permit if he/she determines that the permittee, his agents, or employees have committed three or more violations of any term or provision of such permit or of this article within the 12-month period immediately preceding such determination, or at any time upon conviction of a violation of any provision of this article. Prior to any such revocation, the city secretary shall provide the permittee notice of any proposed revocation and the grounds for revocation.

(Code 2002, § 22-66; Ord. No. 1996-3, art. II, § 8, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-36. Appeals.**

Any person to whom the city secretary shall have denied a permit or whose permit shall have been revoked under this article may appeal such denial or revocation to an appeal board consisting of the mayor, the city attorney, and the city administrator. Such an appeal shall be made in writing and filed with the city administrator's office not more than five (5) calendar days following such denial or revocation by the city secretary. Within five (5) calendar days of the filing of such appeal, the city administrator shall provide notice of the appeal hearing to the appealing party, which notice shall be sufficient if sent to the email address of such appealing party as shown on the application for the permit. Following such hearing, if the appeal board shall determine that there exist sufficient grounds for denial or revocation of any such permit, then the decision of the city secretary shall be deemed final. If the appeal board shall determine that sufficient grounds do not exist for denial or revocation, then the decision of the city secretary shall be reversed and such permit shall be granted or reinstated.

(Code 2002, § 22-67; Ord. No. 1996-3, art. II, § 9, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

## Chapter 64 PEDDLERS, SOLICITORS AND VENDORS<sup>1</sup>

### ARTICLE I. IN GENERAL

#### Sec. 64-1. Purpose.

The purpose of this chapter is to protect the public health, safety and general welfare of the citizens of the city by providing for controls and regulations of solicitors, vendors, and similar businesses operating within the city.

(Code 2002, § 22-31; Ord. No. 1996-3, art. I, § 1, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

#### Sec. 64-2. Definitions.

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

*Cottage Food Production Operation* means an individual, operating out of the individual's home, who:

- Produces any of the following at their home:
  - A baked good that is not a time and temperature control for safety food (TCS food)
  - Candy
  - Coated and uncoated nuts
  - Unroasted nut butters
  - Fruit butters
  - A canned jam or jelly
  - A fruit pie
  - Dehydrated fruit or vegetables, including dried beans
  - Popcorn and popcorn snacks
  - Cereal, including granola
  - Dry mix
  - Vinegar
  - Pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less
  - Mustard
  - Roasted coffee or dry tea

---

<sup>1</sup>State law reference(s)—Authority to regulate peddlers, V.T.C.A., Local Government Code §§ 51.001 , 215.031 .

- A dried herb or dried herb mix
- Plant-based acidified canned goods
- Fermented vegetable products, including products that are refrigerated to preserve quality
- Frozen raw and uncut fruit or vegetables
- Any other food that is not a TCS food
- Has an annual gross income of \$50,000 or less from the sale of the described foods
- Sells the foods produced directly to consumer
- Delivers products to the consumer at the point of sale or another location designated by the consumer

*Display* means to exhibit merchandise in any fashion, including in or upon vehicles, racks, shelves, hangers, or tables or upon the ground.

*Donation and/or recycling vendor* means any organization, entity, or individual engaged in the business of accepting textile or household goods for the purpose of reselling or donating accepted items.

*Edible goods* means:

- (1) Prepackaged food, including, but not limited to, candy, beverages, and ice cream.
- (2) Prepared food, including, but not limited to, hot dogs, desserts, and pizza.
- (3) On-site prepared food, including, but not limited to, shaved ice, sandwiches, and tacos.

*Food Establishment* means:

(A) A food establishment is an operation that:

(i) stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption, such as a restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending machine location, self-service food market, conveyance used to transport people, institution, or food bank; and

(ii) relinquishes possession of food to a consumer directly, or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises regardless if there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not time/temperature controlled for safety (TCS) foods;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables and/or cottage foods;

(iii) a food processing plant, including one that is located on the premises of a food establishment;

(iv) a cottage food production operation;

(v) a private home that receives catered or home-delivered food

*Hawker* means a peddler who makes noise to advertise his merchandise for sale, either by crying, shouting, ringing of bells or other means. The term "hawking" means to engage in the activities of a hawker.

*Ice cream truck* means a motor vehicle in which prepackaged ice cream, popsicles, ice sherbets or frozen desserts of any kind are sold on the city streets.

*Merchandise* means goods, wares, services, photographs, magazines, plants, animals, fruit, meat, vegetables or other foods, whether cooked or otherwise, which are not offered for subsequent retail sale.

*Mobile food court* means a land use approved through a Special Use Permit (SEE Sec. 98-27. – Special use permits and Sec. 98-88. – Table of permitted uses and special uses) and developed in conformity with an approved site plan, where two or more mobile food vendors congregate to offer edible goods for sale to the public.

*Mobile food unit/Mobile Food Vendor* means a vehicle mounted, self or otherwise propelled, self-contained food service operation designed to be readily movable and used to store, prepare, display, serve or sell food. The term "mobile food unit/vendor" shall include:

1. Mobile food trucks. A mobile food truck is a self-contained motorized unit selling items defined as edible goods.
2. Concession carts. A concession cart is a self-contained unit that is moved by non-motorized means.
3. Concession trailer. A concession trailer is a self-contained unit that is pulled by a motorized unit and has no power to move on its own.

*Peddler* means a person, including his agents or employees, who goes from person to person, place to place or house to house, and who sells or offers to sell merchandise then in his possession. The term "peddling" means to engage in the activities of a peddler.

*Solicitor* means a person, including his agents or employees, who goes from person to person, place to place or house to house, selling, offering for sale or taking orders for the sale of merchandise not then in his possession, or who requests the gift or donation of money, property, services or any other thing of value. The term "soliciting" or "solicitation" means to engage in the activities of a solicitor.

*Special Event* means a sports event, pageant, celebration, historical reenactment, entertainment, exhibition, parade, fair, festival, or similar activity that is not a demonstration, engaged in by one or more persons, and could potential impede traffic, impact city infrastructure or operations, and/or disrupt the general public's quiet enjoyment of their day.

*Street* means the entire width between the boundary lines of every way publicly maintained, where any part thereof is open to the use of the public for purposes of vehicular travel, including the ditches, drains, median, sidewalk and esplanade thereof, of any public alley, road, street, avenue, parkway or highway which is located within the city.

*Street festival* means any event, activity or entertainment sponsored by any organization, entity, or individual which may attract 25 or more persons and conducted in whole or in part within any street and for which admission may be charged or at which peddling, hawking, soliciting, transient dealing, or operation of a mobile food unit may occur. The term "street festival" shall not include a rally conducted in support of or opposition to a candidate for political office or a ballot proposition in any election called by a federal, state or local unit of government.

*Transient dealer* means a person, including his agents or employees, who displays and sells or offers to sell merchandise from a fixed location not upon premises which are owned by the person or for which definite arrangements have been made for the lease, hire or rental for a term of at least one month. The term "transient dealing" means to engage in the activities of a transient dealer.

*Unattended* means without the continuous presence of a person to personally receive and issue receipts for donated items at the time they are deposited at the UDB.

*Unattended donation bin or UDB* means an unattended bin, container, dumpster or similar receptacle that is placed outdoors at a location visible from a public place for the purpose of receiving and/or temporarily storing donated food, clothing, shoes, toys, or other personal property.

(Code 2002, § 22-32; Ord. No. 1996-3, art. I, § 1.2, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-3. Exemptions.**

- (A) The provisions of this article shall not be deemed applicable to persons engaged in interstate commerce or to any such person to whom application of the provisions of this article would impose a direct and unlawful burden on interstate commerce.\
- (B) Farm products. Any mobile food unit selling only non-refrigerated farm products in an unrefined state is exempt from this article.
- (C) Mobile food units operating under a valid city-issued Street Festival permit or other Special Event permit.
- (D) Mobile food units operating as an accessory use to a primary food establishment located on the same property, or property contiguous with the property that contains the primary food establishment. Products distributed by a mobile food unit under this subsection must be produced by the on-site primary food establishment.
- (E) Cottage food production operations
- (F) Continuously roaming ice cream trucks holding a valid food service permit through the appropriate County Department

(Code 2002, § 22-33; Ord. No. 1996-3, art. I, § 1.3, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-4. Location.**

It shall be unlawful for any person to engage in the business of peddling, hawking, soliciting, transient dealing or mobile food unit operations within any public street or upon any property owned or leased by the city and located within the city that is not a city-designated location and without a valid permit from the city.

Mobile food units may be allowed in the Commercial District (other than the Commercial District with the Historic District Overlay Zone designation SEE City Zoning Map), Industrial District and Institutional District after a mobile food unit permit is issued by the city (SEE Sec. 98-88. - Table of permitted uses and special uses).

Mobile food units may be permitted in the Historic District Overlay Zone and any other Zoning District in which mobile food units are not a allowed only after approval through the Special Use process and subsequently a mobile food unit permit issued by the city (SEE Sec. 98-27. - Special use permits).

(Code 2002, § 22-34; Ord. No. 1996-3, art. II, § 1, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-5. Hours of residential solicitation.**

It shall be unlawful for any person, except with the express advance consent of the owner, to enter in or upon any home or residential premises within the city to solicit or to sell or offer to sell merchandise, except between the hours of 10:00 a.m. and 5:00 p.m.



(Code 2002, § 22-35; Ord. No. 1996-3, art. II, § 3, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-6. Street festivals.**

Street festivals must obtain a permit from the city prior to the use of any public street or upon any property owned or leased by the city. In addition to the requirements of section 64-31, street festival organizers are required to provide a certificate of insurance listing the city as additional insured in an amount established by the city. The organizer of the street festival must maintain and provide to the city a list of all vendors at the event that includes sufficient information for each vendor to comply with the permit application requirements of this chapter.

- (1) Each applicant for a street festival shall be required to file for a permit application, 30 calendar days prior to the event, with the office of the city secretary.
- (2) The fee for street festival permits shall be \$50.00 with a clean-up deposit of \$200.00 that shall be paid prior to the permit issuance.
- (3) The street festival permit applicant shall provide detailed application information including, but not limited to:
  - a. Identify organization conducting the event and event coordinator contact information;
  - b. Include any authorization(s) for use of private property, street locations and/or street closure requests;
  - c. List all activities to be conducted at the event;
  - d. Provide detailed site plan showing how event will be set up;
  - e. Provide date and time of on-site preparation and clean-up after the event;
  - f. If alcohol will be sold, a TABC permit and proof of host liquor liability insurance shall be provided;
  - g. If alcohol will be sold and consumed on the street, sidewalk or alley, street festival applicants must meet the requirements of Section 6-57, Alcoholic Beverages, Consumption on the street, sidewalk, or alley.
  - h. If animals or livestock are to be used in conjunction with the event, a handwashing station shall be provided, and the location shown on the site plan; and
  - i. Certificate of insurance listing the city as additional insured.
- (4) Individual vendors operating under a street festival permit are allowed to operate during festival hours.
- (5) The event coordinator shall provide a detailed list of all participating vendors including contact information..
- (6) The issuance of the street festival permit may be approved by the city administrator upon review and approval by the police chief.
- (7) The street festival permit upon approval of the city administrator shall be issued by the city secretary.

(Ord. No. 2020-08 , § I, 8-11-2020; Ord. No. 2021-11 , § 2, 6-22-2021)

### **Sec. 64-7. Donation and/or recycling vendors.**

- (a) It shall be unlawful for any organization, entity, or individual to conduct donation and/or recycling business activities on any public street or upon any property owned or leased by the city. Donation and/or recycling

locations operating on private property within the city must provide notarized written consent of the property owner to the city in addition to vendor application requirements found in section 64-31.

- (b) Donation and/or recycling locations must be staffed with at least one attendant continuously during operating hours. Donation bins commonly used in industry practices constitute a location of operation. No donation and/or recycling location shall accept donated goods except between the hours of 8:00 a.m. and 8:00 p.m. Location facilities shall be secured during non-operating hours in a manner that prevents unauthorized items from being left on site. Failure to properly secure the facility location to prevent unlawful dumping is grounds for immediate revocation of the vendor permit.

(Ord. No. 2020-08 , § I, 8-11-2020)

**Secs. 64-8—64-28. Reserved.**

**ARTICLE II. PERMIT**

**Sec. 64-29. Required.**

It shall be unlawful for any person to engage in the business of peddling, hawking, soliciting, providing donation and/or recycling services of textiles and household goods, transient dealing, or operation of a mobile food unit within the city without having first obtained a permit to engage in such business.

(Code 2002, § 22-61; Ord. No. 1996-3, art. II, § 2, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

**Sec. 64-30. Classifications; term; fee.**

The following fee applies to the class of permit. No permit shall be issued prior to payment of the fee listed below. .

Class	Term		6-month fee
Peddler	6 months		\$100.00
Hawker	6 months		\$100.00
Solicitor	6 months		\$100.00
Transient dealer	6 months		\$100.00
Mobile food unit	6 months		\$600.00

(Code 2002, § 22-62; Ord. No. 1996-3, art. II, § 4, 6-4-1996; Ord. No. 2004-14, § 1, 8-24-2004; Ord. No. 2020-08 , § I, 8-11-2020; Ord. No. 2020-13 , § 1, 11-10-2020)

**Sec. 64-31. Application.**

A completed application and all necessary information must be properly submitted to the office of the city secretary not less than ten (10) calendar days prior to the requested commencement of the activity. Each application shall include the following:

(Supp. No. 6)

- (1) Full name, address, phone number, and email address of the primary applicant. The primary applicant should be the owner/manager of the operation and will be the main point of contact for all issues. If the applicant is a partnership or firm or joint venture, the full names, addresses, phone numbers and email addresses of the authorized officers signing the application. If the applicant is a corporation, the applicant shall provide the legal name, DBA, a copy of the corporate documents on file with the TX Secretary of State, and names, phone numbers and email addresses for all authorized agents for the corporation. A copy of the primary applicant's valid government issued ID must be submitted with the application.
  - (2) Detailed written narrative of the requested activity (type of solicitation, location of solicitation, full description of the merchandise to be sold, hours of activity, and any other information required by the city to consider the application). Include how electricity will be provided, how potable water will be provided, how bathrooms for the workers and customers will be provided, and how trash is going to be serviced. Include a statement from the primary applicant describing all criminal convictions and/or civil judgments arising from any State or Federal court within the last ten (10) years. If no convictions or civil judgements please provide a statement stating same. Include a statement from the primary applicant that the applicant has had no permit issued pursuant to this article revoked in the previous one-year period.
- (3) If the applicant is not the owner of such location, then the applicant shall also provide the lease, license, or signed notarized statement from the property owner providing permission to the primary applicant for the use stated on the application.

6 For mobile food units:

- Proof of business auto liability insurance covering the mobile food vending unit
- Sales tax number with a copy of the sales tax permit
- Copy of the Montgomery County Health Department food service permit
- A detailed sketch plan illustrating all components of the activity and exact location to any other buildings, parking lots, and all businesses within 100' of the proposed activity location. If applicable, location of trash receptacles, bathrooms, parking area, and seating area
- A detailed narrative of how electricity will be provided, how potable water be provided, how bathrooms for the workers and customers will be provided, and how trash is going to be serviced
- A description or photo of the vehicle/trailer/cart being used for the mobile food unit
- Mobile food unit license plate number and VIN
- An illustration of all proposed signage and lighting related to the activity

(Code 2002, § 22-63; Ord. No. 1996-3, art. II, § 5, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020; Ord. No. 2020-13 , § 1, 11-10-2020)

### **Sec. 64-32. Exceptions; charities; public well-being; limited duration activities.**

- (a) Notwithstanding any provision to the contrary contained in this article, no permit fee shall be charged under section 64-30, with respect to the following:
  - (1) Any charitable institution, organization or association organized and conducted exclusively for charitable purposes, and not for private gain or profit.

- 
- (2) Any individual, association, organization or other entity conducting or staging any concert, exhibition, lecture, entertainment or dance where the gross profits derived therefrom are used solely for charitable or benevolent purposes and not for the purpose of private gain or profit.
  - (3) Any organization, association or other entity holding any convention in the city and sponsoring any entertainment, dance, concert, exhibition, lecture or other event directly and exclusively connected with such convention, provided that any proceeds realized from such convention are devoted to the purposes of the entity sponsoring the same and are not for the purpose of private gain or profit of any individual or entity.
  - (4) Any service club or organization, such as Kiwanis, Rotary or Lions Clubs, nonprofit automobile clubs, chambers of commerce, trade associations, manufacturers' associations, labor organizations, and similar community or professional service clubs or organizations which do not contemplate the distribution of profits or dividends to the members thereof.
- (b) Any person, association, organization or other entity claiming an exemption as provided in subsection (a) of this section, shall provide such documentation and/or other evidence as may be required by the city secretary to substantiate and confirm the exempt status of such person, association, organization or other entity.
  - (c) All other applicable provisions of this article shall pertain to and be applicable to any such exempted persons, associations, organizations or other entities.

(Code 2002, § 22-63.1; Ord. No. 2004-14, § 2, 8-24-2004; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-33. Special requirements for mobile food units.**

- (a) Each permit for operation of a mobile food unit shall be conditioned upon continuous compliance with all federal, state and local laws or rules adopted under such laws relating to food service, and the permittee shall at all times prominently display a current food service permit issued by the county health department.
- (b) Each permit for operation of a mobile food unit shall be conditioned upon continuous compliance with the following:
  - (1) Each driver or operator of a mobile food unit shall maintain financial responsibility as required by the Texas Motor Vehicle Safety Responsibility Act, V.T.C.A., Transportation Code ch. 601 ;
  - (2) No sales shall be made on any street or roadway where posted speed limits are in excess of 30 miles per hour;
  - (3)
  - (4) No person shall sell or solicit sales of merchandise from a mobile food unit within 1,000 feet of any public or private school between the hours of 9:00 a.m. and 5:00 p.m.;
  - (5) No person shall sell or solicit sales of merchandise from a mobile food unit except between the hours of 9:00 a.m. and 9:00 p.m. unless operating under a street festival permit in accordance with section 64-6; and
  - (6) The permit issued pursuant to this article shall at all times be conspicuously posted upon the mobile food unit.

(Code 2002, § 22-64; Ord. No. 1996-3, art. II, § 6, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-34. Granting or denial; issuance; transfer.**

Within ten days of receipt of an application for a permit required by this article, the city secretary, upon finding the application and all submitted materials complete, may grant such application and issue the permit and identification badges required by this article or such application shall be deemed denied. The city secretary shall grant any application which on its face complies with the provisions set forth in section 64-31 and, if applicable, section 64-33, and shall deny any application which fails to meet such requirements. Upon written request of the applicant, the city secretary shall set forth in writing the reasons for the denial of any permit. If granted, the city secretary shall issue to the applicant a permit which shall set forth the permit number, the activity permitted, the effective and expiration dates of the permit and the name of the person to which the permit has been granted, and the name of each person authorized to engage in the permitted activity. No permit shall be assignable.

(Code 2002, § 22-65; Ord. No. 1996-3, art. II, § 7, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-35. Revocation.**

- (a) Any permit issued pursuant to this article may be revoked by the city secretary if he/she determines that such permit was obtained upon the basis of any intentional false material misrepresentation by the applicant, upon any conduct by the permittee, his agents or employees which arises from or is directly related to the permitted activity and which conduct is a violation of criminal statute, or upon violation by the permittee, his agents or employees of any term or provision of such permit or of this article.
- (b) The city secretary may revoke any permit if he/she determines that the permittee, his agents, or employees have committed three or more violations of any term or provision of such permit or of this article within the 12-month period immediately preceding such determination, or at any time upon conviction of a violation of any provision of this article. Prior to any such revocation, the city secretary shall provide the permittee notice of any proposed revocation and the grounds for revocation.

(Code 2002, § 22-66; Ord. No. 1996-3, art. II, § 8, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

### **Sec. 64-36. Appeals.**

Any person to whom the city secretary shall have denied a permit or whose permit shall have been revoked under this article may appeal such denial or revocation to an appeal board consisting of the mayor, the city attorney and the city administrator. Such appeal shall be made in writing and filed with the city administrator's office not more than five (5) calendar days following such denial or revocation by the city secretary. Within five (5) calendar days of the filing of such appeal, the city administrator shall provide notice of the appeal hearing to the appealing party, which notice shall be sufficient if sent to the email address of such appealing party as shown on the application for the permit. Following such hearing, if the appeal board shall determine that there exist sufficient grounds for denial or revocation of any such permit, then the decision of the city secretary shall be deemed final. If the appeal board shall determine that sufficient grounds do not exist for denial or revocation, then the decision of the city secretary shall be reversed and such permit shall be granted or reinstated.

(Code 2002, § 22-67; Ord. No. 1996-3, art. II, § 9, 6-4-1996; Ord. No. 2020-08 , § I, 8-11-2020)

Text Amendments to the City of Montgomery TX Municipal Code Chapter 64, Vendor Ordinance, and Section 98-88, Table of Permitted and Special Uses, to Provide City Regulations for the Operation of a Mobile Food Unit / Mobile Food Court Within the City of Montgomery.

- **History**
- **Amendment Process**
- **Main Changes**



History: Regulating this type of activity has been discussed at the policy level for the past couple of years. Regulatory issues have been discussed, text amendments have been proposed, however no changes were adopted.

Amendment Research Process: Review current ordinance and issues. Determine best practices in local government for this activity. Research comparable communities' ordinances, determine what has worked and what hasn't for that city, tailor an ordinance to fit the needs of *our* city and bring forward for community discussion/input, and subsequently to the governing body for adoption consideration.

City of Montgomery Ordinance Amendment Process: Text Amendments to the Municipal Code require a public hearing(s), ordinance reading(s), and formal City Council approval. Text Amendments to the Zoning Ordinance (Table of Permitted Uses) require Planning and Zoning review, public hearing, and transmittal of recommendations to the City Council for consideration before final Council approval. The Amendments proposed to the vendor/food truck ordinance involves the Zoning Ordinance *and* Municipal Ordinance thus Planning and Zoning and the Council are involved with these proposed amendments.

Where We Are in the Process: We held a Council workshop on April 11, 2023 at which time we received feedback from the Council and attendees. The Planning and Zoning Commission was introduced to the amendments on April 04, 2023. The P&Z Commission subsequently held a Public Hearing on May 02, 2023 and have transmitted their recommendations. The intent this evening is to do a second review of the amendments, hammer out any issues, and bring the amendments back to the Council at a subsequent meeting for formal consideration.



# Main Changes

**Expanded Definitions to align with State Law and clarify terms.** Included definitions to include **Mobile Food Court** and **Mobile Food Unit**

**Mobile food court** means a land use approved through a Special Use Permit (SEE Sec. 98-27. - Special use permits and Sec. 98-88. - Table of permitted uses and special uses) and developed in conformity with an approved site plan, where two or more mobile food vendors congregate to offer edible goods for sale to the public.

**Mobile food unit/Mobile Food Vendor** means a vehicle mounted, self or otherwise propelled, self-contained food service operation designed to be readily movable and used to store, prepare, display, serve or sell food. The term “mobile food unit/vendor” shall include:

1. Mobile food trucks. A mobile food truck is a self-contained motorized unit selling items defined as edible goods
2. Concession carts. A concession cart is a self-contained unit that is moved by non-motorized means
3. Concession trailer. A concession trailer is a self-contained unit that is pulled by a motorized unit and has no power to move on its own

**Added Exemptions.**

- (A) Farm products. Any mobile food unit selling only non-refrigerated farm products in an unrefined state is exempt from this article.
- (B) Mobile food units operating under a valid city-issued Street Festival permit or other Special Event permit.
- (C) Mobile food units operating as an accessory use to a primary food establishment located on the same property, or property contiguous with the property that contains the primary food establishment. Products distributed by a mobile food unit under this subsection must be produced by the on-site primary food establishment.
- (D) Cottage food production operations
- (E) Continuously roaming ice cream trucks holding a valid food service permit through the appropriate County Department



## Defined locations where this activity is allowed.

**Mobile food units** may be allowed in the Commercial District (other than the Commercial District with the Historic District Overlay Zone designation SEE City Zoning Map), Industrial District and Institutional District after a mobile food unit permit is issued by the city (SEE Sec. 98-88. - Table of permitted uses and special uses).

Mobile food units may be permitted in the Historic District Overlay Zone and any other Zoning District in which mobile food units are not allowed only after approval through the Special Use process and subsequently a mobile food unit permit issued by the city (SEE Sec. 98-27. - Special use permits).

## Proposed changes to the permit fee.

### Sec. 64-30. Classifications; term; fee.

*Except as specifically provided by section 64-32, no permit shall be issued pursuant to this article except upon application. The following fee applies to the class of permit. No permit shall be issued prior to payment of the fee listed below, accompanied by the fee as currently established or as hereafter adopted by resolution of the city council from time to time.*

Class	Term	1-month fee	6-month fee
Peddler	<del>1 month</del> or 6 months	<del>\$20.00</del>	<del>\$50.00</del> <u>\$100.00</u>
Hawker	<del>1 month</del> or 6 months	<del>\$20.00</del>	<del>\$50.00</del> <u>\$100.00</u>
Solicitor	<del>1 month</del> or 6 months	<del>\$20.00</del>	<del>\$50.00</del> <u>\$100.00</u>
Transient dealer	<del>1 month</del> or 6 months	<del>\$20.00</del>	<del>\$50.00</del> <u>\$100.00</u>
Mobile food unit	<del>1 month</del> or 6 months (or expiration of food service permit, whichever comes first)	<del>\$20.00</del>	<del>\$50.00</del> <u>\$600.00</u>
Roadside food vendor	<del>1 month</del> or 6 months (or expiration of food service permit, whichever comes first)	<del>\$20.00</del>	<del>\$50.00</del>

(Code 2002, § 22-62; Ord. No. 1996-3, art. II, § 4, 6-4-1996; Ord. No. 2004-14, § 1, 8-24-2004; Ord. No. 2020-08, § 1, 8-11-2020; Ord. No. 2020-13, § 1, 11-10-2020)

Class	Term	One Month Permit Fee	Six Month Permit Fee
Peddler	Six Months	N/A	\$100
Hawker	Six Months	N/A	\$100
Solicitor	Six Months	N/A	\$100
Transient Dealer	Six Months	N/A	\$100
Mobile Food Unit	One to Six Months	\$100	\$600

Class	Term	One Month Permit Fee	Six Month Permit Fee
Peddler	One to Six Months	\$50	\$100
Hawker	One to Six Months	\$50	\$100
Solicitor	One to Six Months	\$50	\$100
Transient Dealer	One to Six Months	\$50	\$100
Mobile Food Unit	One to Six Months	\$100	\$600

Class	Term	One Month Permit Fee	Three Month Permit Fee
Peddler	One Month	\$50	\$100
Hawker	One Month	\$50	\$100
Solicitor	One Month	\$50	\$100
Transient Dealer	One Month	\$50	\$100
Mobile Food Unit	One to Three Months	\$100	\$200

**Expanded the information requirements for the application. Cleaned up some of the language in other sections. Removed unnecessary/outdated regulations.**

# Proposed Amendment Sec. 98-88

## Table of Permitted Uses and Special Uses

**Sec. 98-88. Table of permitted uses and special uses.**

(a) Permitted uses and special uses in the various zoning districts are as specified in the following table:

Permitted Uses	R-1	R-2	B	ID	I	CC
Accessory uses						X
Aerial or ground survey			X			
Air conditioning sales, retail, complete enclosed (services incidental)			X			
Air conditioning-refrigeration services repair (completely enclosed) with no installation of central units — heating or cooling						X
Airport (nongovernmental)						X
Air product manufacturing				X		
Alcoholic beverage sales off premises			X			
Alcoholic beverage sales on premises						X
Alcoholic beverage storage			X			
Altering and repairing of wearing apparel			X			
Ambulance service			X			
Amusement arcade						X
Amusement park (commercial)						X
Animal shelter or dog pound (nongovernmental)						X
Antique store (completely enclosed)			X			
Apartment hotel						X
Apothecary, limited to the sale of pharmaceutical and medical supplies			X			
Apparel and accessory store			X			
Appliance repair (completely enclosed)			X			
Armory						X
Art gallery and/or museum (commercial retail sale of objects d'art only)			X			
Asphalt or creosote manufacturing or treatment						X
Assisted living		X	X			
Automobile and truck sales and service (new and used) (service completely enclosed)			X			
Automobile car wash			X			
Automobile filling station and/or service (all repair in district to be completely enclosed)			X			
Automobile glass sales and installation			X			
Automobile muffler sales and installation (completely enclosed)			X			
Automobile parking lots or parking garages (commercial)						X
Automobile rental			X			
Automobile repair			X			
Automobile upholstery sales and installation (completely enclosed)			X			

{00232209.docx } Created: 2022-12-28 11:36:59 [EST]

(Supp. No. 6)

Massage parlor					X		
Metal products fabrication						X	
Milliner (custom)					X		
Millinery manufacture						X	
Millwork and similar wood products manufacture						X	
Mobile Food Unit					X*	X	X
Mobile Food Court							X**
Motel					X		
Motorcycle sales and service					X		
Moving and transfer company						X	
Music store					X		
Nail salon					X		
News stand					X		
Night club/dance hall							X
Novelty and souvenir manufacture						X	
Nursery, daycare, or kindergarten (care of up to six children)	X	X					
Nursery, daycare, or kindergarten (care of up to 20 children)					X		
Nursery, daycare, or kindergarten (care of over 20 children)					X		
Nursing home		X	X				
Office equipment and furniture manufacture						X	
Office equipment and supplies (retail)					X		
Office equipment and supplies (wholesale)					X	X	
Offices (professional)					X		
Oil and well supplies and machinery sales						X	
Optical goods (retail)					X		
Optical goods (wholesale)					X		
Optician					X		
Packing and gasket manufacture						X	
Packing plant (no rendering)							X
Paint and wallpaper store					X		
Paper produce manufacture						X	
Paper supplies (wholesale)						X	
Parks, playgrounds, community buildings and other public recreational facilities owned and/or operated by the city or other public agency							X
Passenger depot (railroad or bus)							X
Pawnshop (completely enclosed)					X		
Pecan shelling						X	
Pet shop (completely enclosed)					X		
Petroleum storage (wholesale)						X	
Photographic equipment and supplies sales					X	X	
Photographic studio					X		
Picture framing					X		
Pipe storage						X	X

{00232209.docx } Created: 2022-12-28 11:36:59 [EST]

(Supp. No. 6)

Tanning salon						X		
Tattoo parlor								X
Tavern								X
Taxidermist								X
Television station or studio without transmitter tower						X		
Television station with transmitter tower								X
Textile manufacture							X	
Theater (indoor)						X		
Theater (outdoor, including drive-in theaters)								X
Tile manufacturer (ceramic)							X	
Tobacco processing							X	
Tobacco store						X		
Tool manufacture							X	
Tool rental (completely enclosed)						X		
Tool rental (fence outside storage)						X	X	
Toy manufacture						X	X	
Toy store						X		
Trailer manufacture							X	
Trailer sales						X		
Transit vehicle storage and service							X	
Truck repair and maintenance						X	X	
Truck stop								X
Variety store						X		
Venetian blinds and metal awning fabrication, repair and cleaning							X	
Veterinarian (animal on premises)						X		
Warehousing							X	
Watch repair						X		
Water or sewage pumping (nongovernmental)								X
Water storage (overhead)								X
Welding shop							X	
Well drilling contractors						X	X	

\* Mobile Food Units in the Historic Overlay Zone Requires Special Use Permit

\*\* Mobile Food Courts Require a Special Use Permit

(b) Any use not specifically permitted in this table or in the use regulations of each district set out below, shall require a special use permit, after approval by city council (SEE Sec. 98-27. Special use permits).

(Ord. No. 2014-03, § 1, 5-20-2014)

{00232209.docx } Created: 2022-12-28 11:36:59 [EST]

(Supp. No. 6)

# Next Steps

## City Council

- Additional workshop?
- Place on regular meeting agenda to call for public hearing and subsequent consideration for approval



# Discussion

City Council Workshop  
MINUTES

April 11, 2023, at 5:00 PM

**CALL TO ORDER**

Mayor Byron Sanford called the workshop to order at 5:00 p.m.

- |               |                 |  |
|---------------|-----------------|--|
| Present:      | Byron Sanford   | Mayor  |
|               | Casey Olson     | City Council Place #2                                |
|               | Cheryl Fox      | City Council Place #4                                |
|               | Patricia Easley | City Council Place #5                                |
| Absent:       | T.J. Wilkerson  | City Council Place #3                                |
|               | Carol Langley   | City Council Place #1                                |
| Also Present: | Gary Palmer     | City Administrator                                   |
|               | Nici Browe      | City Secretary & Director of Administrative Services |

**Mayor Byron Sanford** welcomed everyone and informed them that no official action is being sought on this topic tonight, this is a workshop on the subject matter only.

**CONSENT AGENDA:**

1. Workshop on the proposed Mobile Food Unit/Mobile Food Court text amendments to Chapter 64 Peddlers, Solicitors, Vendors of the City Municipal Code AND Zoning Ordinance Section 98-88 Table of Permitted Uses and Special Uses

Mr. Gary Palmer, City Administrator informed Council and the audience that what they have before them is his recommendations for an update to the ordinance. The red strike throughs and red font are the changes that he is recommending.

He went on to describe the conflicts between the State code and city code due to the city code not being updated for such a long period of time.

He moved through the updated definitions and examined the exemption of Cottage Food Industry.

Mr. Palmer stated that in his proposed changes he would also place vendors under a special event as exempt from fee payments.

Mr. Palmer then went on to cover permitted uses.

He concluded his presentation by stating that the application would need to be cleaned up to insure it matches the changes in the code. The process would include a public hearing but before we get to that point, he wished to workshop it with council and get feedback, he had already taken it to Planning & Zoning Commission for their review.

Mayor Byron Sanford addressed the council and asked that they provide an open discussion and provide feedback and informed the audience that they would also get an opportunity to inject their thoughts and suggestions.

Councilmember Casey Olson stated that brick and mortar business owners have invested thousands of tax dollars into the city and should not be undercut by their competitor. He did not want vendors coming in and setting up and having better benefits to conduct business than those who have invested into the city. He added he wanted it to be equal across the board.

Mr. Palmer recognized the point Councilmember Casey Olson was making and stated he would pull the tax information on businesses and the vendors.

Councilmember Cheryl Fox stated that the commercial taxes have been raised considerably.

Mayor Sanford stated that is there going to be addressed the issue of gaining permission to sell like for like, as it doesn't appear to him that those businesses sell the same product.

Councilmember Casey Olson stated his point was about fairness, we have to be fair, so everyone pays the same fees, giving food truck vendors the ability to set up with just a vendor fee where businesses pay above and beyond, there is a disadvantage to being brick and mortar.

Councilmember Patricia Easley inquired if Food Trucks would only be allowed to operate in a food court only.

Councilmember Patricia Easley asked if Food trucks are not considered to be equal, as materially speaking they are site based.

Mr. Palmer responded that food trucks are not site based, they are license based. He went on to add that as we are a small staff one proposal is to change the current one, three and six month permits, to a flat for six months only. Logistically speaking this is more appropriate.

Mr. Palmer reasoned that six months will attract only those serious about doing business and abiding by the rules we have, and another difference will be that the fee will only be paid once the application has been reviewed and approved.

Mayor Sanford stated that 64.31 covers the issue with fairness.

Mr. Palmer stated he would pull property tax for the food businesses and delve into the fee schedule deeper.

Councilmember Patricia Easley stated that these are mobile vendors, not permanent establishments so should not be subject to the same fees as the brick-and-mortar businesses.

Councilmember Casey Olson disagreed and stated that over a year someone can operate long term and could come and go, whereas those established businesses have invested hundreds of thousands in some cases into the city. Where is fairness in allowing people to operate with the same items as those who are here full-time at less cost.

Councilmember Casey Olson and Councilmember Patricia Easley held a discussion on the practicalities and fairness of issuing temporary permits for food trucks.

Mayor Byron Sanford stated that he wants to make sure we as a city are responding to business owners' complaints.

Councilmember Patricia Easley voiced her concern that we are making it hard to do business.

Mr. Palmer stated that maybe there is validity to assessing a fee based on location. He went on to say that from the conversations here he can say that the sticking point is the fees, therefore, he will go back and pull tax information and comps and come back with alternatives.

**Sara Countryman, resident** stated that she had requested from the State the taxes and has yet to receive any information. She does know that 2% goes to the city.

**Bill Clevenger, resident** stated that as a food truck owner he does pay sales tax and he has proved this multiple times to previous administration staff, the way they are unique is that they do not pay property taxes.

**Julie Davis, resident** stated there is a big difference between tenants too as the renters of the coffee shop for instance have all of the start up costs, yet those like Bill's food trucks just show up for one fee, maybe one day. Those that come for a festival, trash our streets, tear up the roads and leave.

Mayor Sanford corrected Ms. Davis and stated that the coffee shop is owned by those operating it.

**Jeff Waddell, P&Z Chair and resident** stated that once Gary has crunched the numbers it would be clear the direction the city needs to take based on the revenues.

Councilmember Casey Olson went on to say if we continue down this path the food trucks will crush our restaurants, like the area for Minute Maid Park in Houston.

Councilmember Patricia Easley stated she disagreed with that statement as it is a totally different population down there.

**Jeff Waddell, P&Z Chair and resident** added that the real world is there is going to be competition for businesses, what the city needs is walkability and signage and felt the earlier statement of the food truck competing with those businesses around, he fails to see how a hotdog stand competes with a steak house.

Councilmember Casey Olson argued that it's not just the competition it's the reality that the customers to the food trucks are entering into the restaurants to use their bathrooms too, how is that fair.

Councilmember Patricia Easley commented how he could be sure that those asking for bathroom use are strictly from the food truck.

Councilmember Casey Olson responded because he has been told so by the business owners, and he wanted to point out that he is not opposed to food trucks at all but feels they should operate under the same terms as the brick-and-mortar establishments.

Councilmember Patricia Easley voiced her concern that the city is trying to amend and create policy based on a microcosm of a small area, the net should be cast wider, and we do not need to be reacting to personality conflicts between business owners and food truck vendors.

**Julie Davis, a resident**, suggested that the city place some signs downtown directing customers to the public restrooms.

The council collectively held a discussion on non-mobile versus mobile food unit and the definition thereof.

Mr. Palmer asked the council for their thoughts on maybe making a fee structure based on static and multiple locations.

Mr. Tony Gallucci, resident spoke to Council regarding the food trucks.

**Mr. Bill Clevenger** informed the Council that daily he picks up trash from folks walking around town and places that into his own trash, including booze cans. The city needs to focus on bringing people here to the downtown.

Mayor Byron Sanford asked if nonprofits (501c3) vendors are exempt from fees.

Ms. Browe, City Secretary confirmed that all nonprofit and 501 c3 vendors if they have placed that information on the application form will not be assessed a vendor's fee.

Mayor Byron Sanford thanked everyone for their input and closed the workshop.

**ADJOURNED: 6:00 P.M.**

Submitted by: \_\_\_\_\_  
Nici Browe, City Secretary

Date Approved: \_\_\_\_\_

\_\_\_\_\_  
Byron Sanford, Mayor



# PLANNING & ZONING COMMISSION RECOMMENDATION AND REPORT

TO: MONTGOMERY MAYOR AND CITY COUNCIL

FROM: PLANNING & ZONING COMMISSION

CC: GARY PALMER, CITY ADMINISTRATOR  
DAVE MCCORQUODALE, DIRECTOR OF PLANNING & DEVELOPMENT  
NICI BROWE, CITY SECRETARY

SUBJECT: REPORT CONCERNING PROPOSED AMENDMENTS TO SECTION 98-88 OF THE CITY CODE OF ORDINANCES (TABLE OF PERMITTED USES).

Mayor and Members of City Council,

Pursuant to Sections 98-30 and 98-53 of the City of Montgomery Code of Ordinances (“the Code”), the Montgomery Planning and Zoning Commission met on May 2, 2023 to consider proposed amendments to Section 98-88 of the City Code of Ordinances. After duly noticed public hearings with an opportunity for public comments concerning the proposed amendments, the Commission found:

- The Table of Permitted Uses does not currently address mobile food units or mobile food courts (also called food truck parks).
- The increase in popularity of mobile food units as well developments that include multiple mobile food units necessitates an update to city zoning regulations.
- By a vote of 5-0 the Planning and Zoning Commission hereby presents this Recommendation and Report pursuant to Section 98-30 of the City Code, recommending to **approve** the proposed amendments to Section 98-88 of the City Code.

I, Jeffrey Waddell, Chairman of the Montgomery Planning and Zoning Commission, certify this Report to be true and correct to the best of my knowledge.

Signed: Jeffrey Waddell  
Jeffrey Waddell, Chairman

Attest: Nici Browe  
Nici Browe, City Secretary

## MINUTES OF REGULAR MEETING

April 4, 2023

### MONTGOMERY PLANNING AND ZONING COMMISSION

#### CALL TO ORDER

Chairman Waddell declared a quorum was present and called the meeting to order at 6:00 p.m.

Present: Jeffrey Waddell, Bill Simpson, Merriam Walker, Daniel Gazda

Absent: Britnee Ghutzman

Also Present: Dave McCorquodale, Assistant City Admin. / Director of Planning & Development

#### VISITOR/CITIZENS FORUM

Mrs. Julie Davis, city resident, provided comments on agenda item #1. Mrs. Davis said she was opposed to the new fee schedule for mobile food vendors. She also shared concerns about one-time event vendors not wanting to pay for a 6-month permit and how charities and non-profits are regulated. She appreciated many of the other changes to the ordinance.

Jeff Waddell thanked the all the visitors for taking the time to attend the meeting.

1. **Proposed Text Amendments to Chapter 64 Peddlers, Solicitors Vendors and Section 98-88 Table of Permitted Uses and Special Uses to provide requirements for Mobile Food Units (Food Trucks) and Mobile Food Courts (Food Truck Parks).**

City Administrator Gary Palmer gave an overview of the proposed amendments to the ordinance and discussed the need for the changes with the Commission. Mr. Palmer said the City Council had asked him to address the vendor ordinance revisions as one of his first priorities after joining the city in January 2023. He said his process when asked to review ordinances is to connect with professional organizations and review other city's ordinances to find best practices to achieve the goal. He said the revisions under review reflect that process. Mr. Palmer said the revisions also include changes that bring our rules in line with current state law. The primary changes include defining mobile food courts and mobile food units, creating exemptions that exempt street festival

vendors from needing an individual permit. Those vendors would be able to operate under the street festival permit.

He said the changes to the vendor ordinance does not directly affect the P&Z Commission, but the proposed additions to the Table of Permitted Uses does require P&Z review and action. He explained that under the proposed amendments individual mobile food vendors within the Historic Preservation District would require a Special Use Permit along with mobile food courts. Jeff Waddell asked to confirm that two or more mobile food vendors on a property constituted a mobile food court. Mr. Palmer affirmed that point. Bill Simpson asked how the requirements for mobile food courts would be set; Mr. Palmer said that would be determined through the SUP process. The intent is to minimize red tape and adjust to circumstances as needed. Bill also asked about the county's 48-hour mobility requirement. Mr. Palmer said that is not actually a county requirement they can enforce, but the county does have that on their application. He went on to say that regulating mobility would be difficult to enforce and that the proposed vendor ordinance does not have mobility requirements for mobile food vendors.

Merriam Walker said there were food trucks downtown already and asked if a mobile food court would apply if one of the vendors moved in and out. Dan Gazda asked a follow up question regarding what the trigger was for a mobile food court. Mr. Palmer said two or more meant a food truck court whether it was only for a day or longer. Regarding the proposed fees, Mr. Palmer said he didn't want to get hung up on the amount of the permit and that it was a decision to be made by Council, but the city should set it high enough to ensure fly-by-night operations don't come to the city. Mr. Palmer said there was not consistency on fees between different cities and the goal should be a fair fee for the city and the vendor. He added that city council had requested a higher fee for mobile food vendors to provide parity between them and brick and mortar restaurants. Additional discussion was had on examples of events and individual vendors. Merriam Walker spoke to the proposed changes to the hours of operation and asked for clarification. Mr. Palmer said the next steps would be for P&Z to complete their review of the Table of Permitted Uses and transmit a recommendation to the City Council.

No action required or taken.

**MINUTES OF REGULAR MEETING**

**May 2, 2023**

**MONTGOMERY PLANNING AND ZONING COMMISSION**

**CALL TO ORDER**

Chairman Waddell declared a quorum was present and called the meeting to order at 6:01 p.m.

Present: Jeffrey Waddell, Bill Simpson, Merriam Walker, Daniel Gazda, Britnee Ghutzman

Absent: none

Also Present: Dave McCorquodale, Assistant City Admin. / Director of Planning & Development

**VISITOR/CITIZENS FORUM**

Two residents wished to speak on the rezoning request listed on the agenda. Their comments were held until the agenda item was considered by the Commission.

**1. Approval of the meeting minutes for March 7, 2023 and April 4, 2023.**

Jeff Waddell noted that the March 7, 2023 contained a typo—the word “side” should be used instead of “size” under Agenda Item #6 when referring to building setbacks on a lot. Staff noted the correction. Bill Simpson moved to approve the minutes as corrected. Dan Gazda seconded the motion, the motion carried unanimously. (5-0)

**2. Review and discussion on a proposed residential structure near the intersection of College and Pond Streets.**

Staff reviewed information provided by Mr. GERAL FAUSS, the property owner. The property is located in downtown behind Burger Fresh and is 35-feet wide by 25-feet deep. The owner provided historical images and a narrative that explain that the city’s old water tower used to be located on the site. His proposal that he would like feedback from the Commission on is for a residential dwelling designed to be similar in form to a water tower. The living quarters would be elevated at the height of a second-story like a water tower and there would be two parking spaces below. Mr. Fauss stated he would like to know if the property is buildable since the county appraisal district

had increased his taxes exponentially this year. Staff stated the city attorney could provide an answer on what steps would need to be taken since the lot size is so small relative to required setbacks. The Commission generally appreciates the idea of preserving the history of the water tower site and felt that the structure would be a unique addition to downtown if the setback issues can be worked out. The Commission also provided feedback on the computer mock-up image provided by the owner and preferred a form with less mass, or one that was more open. Mr. Fauss said he understood and wanted to get feedback from the city before hiring an engineer and architect to design the structure. No action needed or taken by the Commission, and they thanked Mr. and Mrs. Fauss for attending the meeting to discuss the item.

**3. Consideration and possible action on a draft Preliminary Report for a rezoning request from R1-Single Family Residential to B-Commercial for 14640 Liberty Street, Montgomery, Texas as submitted by Evan Ballew.**

Staff reviewed the draft report. Jeff Waddell asked if the applicant was in attendance. Mr. Ballew confirmed he was. Merriam Walker stated she had driven in the area after the last meeting. She asked if the property was rezoned to commercial and the owner sold the property, would it stay commercial. Staff affirmed that it would and any uses listed in the Table of Permitted uses for B-Commercial would be allowed by right. She asked if the property was big enough for something like a gas station. Staff said it was not, but a future owner could acquire adjacent property and request it be rezoned to commercial to create a larger site. Bill Simpson asked if the applicant knew the depth of the lot. Mr. Ballew said it was 1/3-acre and roughly 200-feet deep. Britnee Ghutzman said the traffic counts and visibility along FM 149 make commercial suitable along the corridor. Dan Gazda agreed. Ms. Ghutzman said her concern was the residential properties surrounding this property and making sure that adequate buffers were in place for light, sound, etc. to preserve the integrity of the residential properties.

Bill Simpson said he was concerned with uniformity of the properties with existing residential properties on FM 149. He continued that he felt it would be a long time before a significant number of these properties would be commercial. Jeff Waddell mentioned an effort several years ago to fix up old houses. He said he felt there was contradiction by the city in the Future Land Use Plan and encouraging people to fix up houses. Mr. McCorquodale said he didn't see a contradiction since the two initiatives had different purposes. He continued that the MEDC had funded a removal

of blight program for dilapidated structures several years ago and the HOME grant program built new homes for several residents in past years. Merriam Walker said if this property was developed like Arnette Easley's property down the street that was in scale with the surroundings that she could see that as a possibility. She mentioned the city of Tomball where a number of old homes were now used as businesses along busy streets. Merriam said if the city wanted improvement along the corridor, we'd have to be willing to give and take.

Jeff Waddell suggested a Special Use Permit as a possible alternative to rezoning to commercial. Mr. Ballew said the property had been on the market for 7 months because no one wants to purchase a home on a road as busy as FM 149 North. He said he wanted to improve the property by painting the exterior of the house, adding several parking spaces and a sign for his real estate office. Mr. Ballew said there are limited options for small professional office space in the city. Bill Simpson asked if the existing driveway was paved and whether the new parking spaces would be paved. Mr. Ballew affirmed they were paved. Jeff Waddell said the primary issue to him was the future types of commercial activity if the property was rezoned and reiterated that a Special Use Permit would allow the owner to use the property as he intends and allow the city to place some restrictions on the intensity of the commercial activity on the property. Mr. McCorquodale said he would discuss whether an SUP could be used with the city attorneys to confirm it is a possible tool to use in this case. Britnee Ghutzman said her background as an appraiser suggests that the highest and best use for the property is commercial. Merriam Walker said she was also leaning toward commercial property but was concerned about a future gas station or similar use. Mr. Ballew said he felt that people would likely not want to invest in these properties as homes because of the volume of traffic on FM 149. Merriam Walker asked if he had met the neighboring property owners. Mr. Ballew said he had considered it but had not reached out to any of them.

Merriam asked the owner if he planned to live in the residence. He said he does not. She asked the owner how long he had been in Montgomery. He said he grew up in Montgomery and had lived here since 1998. Jeff Waddell suggested moving to the Public Hearing item to continue discussion. No revisions or edits to the Preliminary Report were requested by the Commission.

Daniel Gazda moved to approve the Preliminary Report as presented. Merriam Walker seconded the motion, the motion carried unanimously. (5-0)

4. **Convene into Public Hearing #1 on the Preliminary Report for a rezoning request from R1-Single Family Residential to B-Commercial for 14640 Liberty Street, Montgomery, Texas as submitted by Evan Ballew.**

Jeff Waddell opened the hearing at 6:46 p.m.

Sara Countryman addressed the Commission and said she lives in the neighborhood behind the subject property. She questioned why the applicant purchased the property before rezoning it and did not discuss it with the city and took issue it. She said while a gas station would not fit on this property, someone could purchase adjacent properties to have a bigger site. She also said there were other options in the city for professional office space, including Shanon Salsbury's spaces about a mile from this property. Ms. Countryman also asked what a rezoning action might do for appraisal values of surrounding properties. She said she was opposed to the request and urged the Commission to consider the residential areas around this property. She added that deed and title information for many of the surrounding properties were unclear and that would hamper the redevelopment of the corridor.

Evan Ballew, the applicant, stated he did discuss the property and rezoning with city staff and that it was a calculated decision he had to make when purchasing the property. He said his office team needs more office space than what's available in town. Mr. Ballew said he understood the concern about any commercial use of the property but his intent is to use for professional office space. Mr. Ballew said he was following the process as he understood it and was not trying to hoodwink anyone.

Bill Simpson said he felt like some of the confusion may have been coming from the Future Land Use Plan. He asked where the Future Land Use Plan came from. Jeff Waddell asked if there was anyone else who wanted to speak during the Public Hearing.

Julia Denison stated she lived behind the subject property and had lived there for 8 years. She said they had a lot invested in their home and she has concerns about the other properties being rezoned and possibly bring a strip center and nuisances that would affect their property. She said her realtor told her the property on FM149 would never be commercial and she opposed the rezoning request.

Jeff Waddell thanked the citizens for their input and said that the Commission had heard both sides of the discussion. Mr. McCorquodale said he had one comment from a property owner who could not attend the meeting and that their family opposed the rezoning request. Ms. Annie Butler represented the estate of Edna Jackson across the street from the subject property.

The hearing closed at 7:01 p.m.

**5. Convene into Public Hearing #2 on the Preliminary Report for a rezoning request from R1-Single Family Residential to B-Commercial for 14640 Liberty Street, Montgomery, Texas as submitted by Evan Ballew.**

Jeff Waddell opened the hearing at 7:03 p.m. Britnee Ghutzman asked if the citizens had any suggestions for a buffer between the residential neighborhood behind the property and this property. No additional comments given by the public. The hearing closed at 7:04 p.m.

**6. Consideration and possible action on a Final Report for a rezoning request from R1-Single Family Residential to B-Commercial for 14640 Liberty Street, Montgomery, Texas as submitted by Evan Ballew.**

Staff reviewed the draft report included them in the packet and reminded the Commission the draft was a starting point and that they should edit the report to reflect their recommendation and considerations. Merriam Walker asked about bullet #2 that said the city's Future Land Use Plan identifies this corridor as future B-Commercial. Staff affirmed that was a correct statement. She asked the residents if they were aware of the Future Land Use Plan. She continued by asking when the plan became public knowledge. Mr. McCorquodale said he did not know the exact date but believed it was around 2015 or 2016. She asked if the plan identified the corridor as B-Commercial whether there was an option of allowing "light commercial" or "neighborhood commercial" or whether it was full commercial. Staff stated the only tool we had at present was full B-Commercial. Jeff Waddell said the Commission needed clarity on whether the Future Land Use Plan was official or not. Mr. McCorquodale said the plan was not officially adopted by the Council, but it is the only tool the city has that looks to future land use when considering rezoning requests. He also reminded the Commission that they do not have to follow the Future Land Use Plan when making a recommendation to City Council, it is a guide to consider as part of the request. Merriam Walker asked if a large percentage of the homes in the area have title issues, Ms. Countryman stated many



of the homes in this area did have unclear titles. After additional discussion on points related to traffic, future commercial development in the area, and some of the surrounding residences, Merriam Walker asked to confirm that the draft can be amended to suit the preference of the Commission. Staff affirmed it could. Britnee Ghutzman asked what the side and rear setbacks would be. Mr. McCorquodale said there would be a 25-foot setback and vegetative buffer where commercial abuts residential. Merriam Walker stated that many applicants have presented a vision for a proposed development and when it's built, she felt like it wasn't the same as the vision that was presented to P&Z. Bill Simpson asked if the city could place conditions on a Special Use Permit like transfer of ownership. Staff affirmed the city could. Merriam Walker asked if the city could place a timeframe on the SUP, and staff affirmed they could. Britnee Ghutzman said from an appraisal standpoint, surrounding properties are generally not affected by the rezoning of a neighboring property, but there are exceptions. Jeff Waddell said he saw potential in a Special Use Permit but wasn't comfortable with a commercial rezoning.

Britnee Ghutzman moved to approve the Final Report recommending rezoning of the property to B-Commercial. Merriam Walker seconded the motion. The vote was 3-2 with Jeff Waddell and Bill Simpson opposed.

Following the vote, the Commission had questions on the intent of the previous vote and wished to discuss amending the Final Report. Dan Gazda said he'd misunderstood the intent of the motion and that he favored an SUP over a rezoning to commercial. Following a brief discussion, staff asked the Commission to restate a motion and take another vote due to confusion on the previous motion.

Dan Gazda moved to approve the Final Report with the change that P&Z recommends to NOT approve the rezoning request in order to ensure adequate protection for the residential properties around the subject property. Bill Simpson seconded the motion. The vote was 3-2 with Britnee Ghutzman and Merriam Walker opposed.

**7. Consideration and possible action on a Preliminary Report for proposed amendments to Section 98-88 (Table of Permitted Uses) of the City Code of Ordinances.**

Staff introduced the information and reminded the Commission of the presentation of the Mobile Food Vendor Ordinance revisions by city administrator Gary Palmer at the April meeting. Mr.

Palmer reviewed those revisions and also proposed two related amendments to the Table of Permitted Uses that would require Food Truck Courts as well as individual food trucks within the Historic Preservation District to obtain a Special Use Permit to operate. Bill Simpson said he appreciated the changes Mr. Palmer recommended at the last meeting. Britnee Ghutzman said she spoke with several food truck operators and that some cities issue a business permit for food vendors, and some have limits on the number of permits issued in a year. Britnee said she also had questions about permitting traditional ice cream trucks that drive through neighborhoods. Mr. McCorquodale said conventional ice cream trucks were excluded from the proposed food vendor regulations. Merriam Walker asked if staff had looked into the charity aspect of the proposed changes. Mr. McCorquodale said he was not actively working on the vendor ordinance revisions.

Bill Simpson moved to approve the Preliminary Report as presented. Daniel Gazda seconded the motion, the motion carried unanimously. (5-0)

**8. Convene into Public Hearing #1 on a Preliminary Report for proposed amendments to Section 98-88 of the City Code of Ordinances (Table of Permitted Uses).**

Jeff Waddell opened the hearing at 8:00 p.m. Staff introduced Manny and Michael, the owners and proposed developers of a mobile food court on the north end of downtown. Manny said he appreciated the city's help in their process of development, but they are not going to pursue the project and will be selling the property. No comments were given by the public before or at the meeting. The hearing closed at 8:03 p.m.

**9. Convene into Public Hearing #2 on a Preliminary Report for proposed amendments to Section 98-88 of the City Code of Ordinances (Table of Permitted Uses).**

Jeff Waddell opened the hearing at 8:04 p.m. No comments on the Preliminary Report were given by the public before or at the meeting. The hearing closed at 8:05 p.m.

**10. Consideration and possible action on a Final Report for proposed amendments to Section 98-88 (Table of Permitted Uses) of the City Code of Ordinances.**

Staff reviewed the information provided in packet on the draft Final Report. Britnee Ghutzman asked if the proposed changes still required mobile food operators to still get permission from

property owners to be on site, staff confirmed they did. She also asked if there was a mobility requirement for mobile food vendors in the proposed ordinance, staff said there were not.

Bill Simpson moved to approve the Final Report as presented. Britnee Ghutzman seconded the motion, the motion carried unanimously. (5-0)

**Commission Inquiry**

Jeff Waddell mentioned the townhome zoning district idea from the last meeting and asked to keep it on the list of discussion points for rezoning revisions to discuss at the next joint workshop. Jeff also mentioned the area behind Memory Park for a playground area for children. Mr. McCorquodale said there is a portion of land on the east side of the park that is an HOA reserve and the city is working on an agreement to use the reserve as part of the open space of the park.

**Adjournment**

Britnee Ghutzman moved to adjourn the meeting at 7:55 p.m. Merriam Walker seconded the motion, the motion carried unanimously. (4-0)

Prepared by: \_\_\_\_\_ Date approved: \_\_\_\_\_  
Dave McCorquodale

\_\_\_\_\_  
Chairman Jeffrey Waddell

Attest: \_\_\_\_\_  
Nici Browe, City Secretary

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date:</b> June 13, 2023	<b>Budgeted Amount:</b> N/A
<b>Department:</b> Administration	<b>Prepared By:</b> G. Palmer

**Subject**

Consideration and possible action on: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING CHAPTER 98 ZONING, ARTICLE III DISTRICTS AND ZONING MAP, DIVISION I GENERALLY, SECTION 98-88 TABLE OF PERMITTED USES AND SPECIAL USES OF THE CITY CODE OF ORDINANCES; REPEALING SECTION 98-88 IN ITS ENTIRETY AND ADOPTING THE LANGUAGE HEREIN, PROVIDING A SEVERANCE CLAUSE AND TEXAS OPEN MEETINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

**Recommendation**

Approve the amendment to the City of Montgomery Zoning Ordinance by repealing Section 98-88 Table of Permitted Uses and Special Uses in its entirety and adopted the proposed amended Section 98-88 Table of Permitted Uses and Special Uses as proposed

**Discussion**

In your packets please find the “redline” and “clean” versions of Section 98-88. All text in red are additions to the current ordinance and all red strikethroughs are deletions to the current ordinance. The “clean” version is the final edited version and ready for adoption.

The Council reviewed the proposed amendments at workshops on April 11, 2023 and June 05, 2023. Comments/edits from the workshops have been included in the “clean” version.

The P&Z was presented with the proposed amendments on April 04, 2023. They subsequently held a public hearing on May 02, 2023, and recommended approval. I have included the P&Z Commission recommendation and meeting minutes.

**Approved By**

		Date:
City Administrator	Gary Palmer	Date: June 07, 2023

**ORDINANCE NO. 2023 - XX**

**Consideration and possible action on: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING CHAPTER 98 ZONING, ARTICLE III DISTRICTS AND ZONING MAP, DIVISION I GENERALLY, SECTION 98-88 TABLE OF PERMITTED USES AND SPECIAL USES OF THE CITY CODE OF ORDINANCES; REPEALING SECTION 98-88 IN ITS ENTIRETY AND ADOPTING THE LANGUAGE HEREIN, PROVIDING A SEVERANCE CLAUSE AND TEXAS OPEN MEETINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Montgomery, Texas (the "City Council") desires to safeguard the health, safety and general welfare of the City of Montgomery, Texas (the "City") and its citizens;

**WHEREAS**, The City Council is responsible for the orderly development and regulation of activities within the City;

**WHEREAS**, The City Council desires to further regulate and clarify the standards for mobile food units (food trucks);

**WHEREAS**, The City Council desires to further regulate where in the City mobile food units (food trucks) are permitted;

**WHEREAS**, pursuant to the Texas Local Government Code Chapter 51, the City Council may adopt, publish, amend or repeal an ordinance, rule, or police regulation that is for the good government, peace, and order of the City.

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

SECTION 1. The City Council adopts the findings and recitals above as true and correct.

SECTION 2. Section 98-88 of the City Zoning Ordinance is hereby repealed in its entirety and amended by adopting the following:

**Sec. 98-88. Table of permitted uses and special uses.**

(a) Permitted uses and special uses in the various zoning districts are as specified in the following table:

Table 1. Table of Permitted Uses						
Permitted Uses	R-1	R-2	B	ID	I	CC
Accessory uses						X
Aerial or ground survey			X			
Air conditioning sales, retail, complete enclosed (services incidental)			X			
Air conditioning-refrigeration services repair (completely enclosed) with no installation of central units — heating or cooling						X
Airport (nongovernmental)						X

Air product manufacturing				X		
Alcoholic beverage sales off premises			X			
Alcoholic beverage sales on premises						X
Alcoholic beverage storage			X			
Altering and repairing of wearing apparel			X			
Ambulance service			X			
Amusement arcade						X
Amusement park (commercial)						X
Animal shelter or dog pound (nongovernmental)						X
Antique store (completely enclosed)			X			
Apartment hotel						X
Apothecary, limited to the sale of pharmaceutical and medical supplies			X			
Apparel and accessory store			X			
Appliance repair (completely enclosed)			X			
Armory						X
Art gallery and/or museum (commercial retail sale of objects d'art only)			X			
Asphalt or creosote manufacturing or treatment						X
Assisted living		X	X			
Automobile and truck sales and service (new and used) (service completely enclosed)			X			
Automobile car wash			X			
Automobile filling station and/or service (all repair in district to be completely enclosed)			X			
Automobile glass sales and installation			X			
Automobile muffler sales and installation (completely enclosed)			X			
Automobile parking lots or parking garages (commercial)						X
Automobile rental			X			
Automobile repair			X			
Automobile upholstery sales and installation (completely enclosed)			X			
Automobile wrecking, dismantling or salvage (enclosed by fence)						X
Aviary						X
Bait store			X			
Bakery (retail)			X			
Bakery (wholesale)			X			
Barber shop			X			
Beauty salon			X			
Bed and breakfast	X		X			
Churches					X	
Community home as required by V.T.C.A., Human Resources Code § 123.003	X	X				
Compressed gas manufacturing, repacking and/or storage						X

Dairy equipment (wholesale) (completely enclosed)			X			
Dairy products sales (retail)			X			
Dairy products sales (wholesale)			X			
Delicatessen			X			
Department store			X			
Dog pound or animal shelter (nongovernmental)						X
Drug manufacture						X
Drug sales (wholesale)			X			
Drugstore			X			
Dry cleaning pickup and pressing shops			X			
Dry cleaning plant						X
Dry goods store			X			
Dry goods (wholesale) (completely enclosed)			X			
Electric power generator station (primary station)						X
Electric repair (appliances) (completely enclosed)			X			
Electric repair shop (heavy equipment)				X		
Electrical substation, to be enclosed by a fence or wall of minimum six feet in height, with physical installation being enclosed by a barrier which constitutes a visual screen. Visual screening would not be required in ID district				X		
Electrician			X			
Electroplating			X			
Elevator maintenance and service				X		
Exterminator (completely enclosed)			X			
Farm equipment sales and service (completely enclosed in B-2 district)			X			
Farm supplies			X			
Farming and truck gardening, but not for retail sales (permitted in any district)				X		
Feed store or seed and fertilizer			X			
Felt manufacture (cloth)				X		
Fish market (fenced outside storage)				X		
Fish market (retail)			X			
Fish market (wholesale)			X			
Fix-it shop (completely enclosed)			X			
Floor covering sales (retail completely enclosed)			X			
Floral shop (completely enclosed)			X			
Florist (wholesale) (completely enclosed)			X			
Food locker plant (retail)			X			
Food products (wholesale storage and sales)			X			
Food products manufacture and processing (not rendering)				X		
Food store			X			
Food to go (retail, no curb service)			X			
Foundry						X
Freight depot (railroad and/or truck)				X		

Fruit and produce (wholesale)			X			
Fruit and vegetable stand or store			X			
Funeral home, mortuary or undertaking establishment			X			
Fur dyeing, finishing and storing (no tanning, no hide storage)				X		
Furniture (wholesale sales)			X			
Furniture repair and upholstery (completely enclosed)			X			
Furniture repair and upholstery (fenced outside storage)			X			
Furniture store, retail (completely enclosed) (no repair)			X			
Furniture store, retail (fenced outside storage)			X			
Garage, public or storage				X		
Garden specialty store			X			
Gas filling station and/or service (all repairs to be completely enclosed)			X			
Gas regulation station (screening)				X		
Gift shop (completely enclosed)			X			
Glass (retail sales) (service incidental to sales) (completely enclosed)			X			
Glass (wholesale sales)			X			
Glass manufacturing and glass products manufacturing				X		
Golf course and country club, but no driving range, pitch and putt or miniature golf course						X
Golf driving range, pitch-and-putt or miniature golf course						X
Greenhouse or nursery, retail			X			
Greenhouse or nursery, wholesale				X		
Grocery (wholesale)			X			
Grocery store			X			
Gymnasium (commercial)			X			
Hair products manufacturing and processing				X		
Hardware manufacture				X		
Hardware sales (wholesale)			X			
Hardware store			X			
Heliport			X			
Hobby supply store			X			
Hosiery manufacture			X			
Hospital or sanitarium			X			
Hotel			X			
Ice cream and ice milk (retail)				X		
Ice cream manufacturer (wholesale)				X		
Ice cream store			X			
Ice house (no on-premises consumption of alcoholic beverages in B-1 district)			X			
Ice manufacture				X		



Insulation manufacture and fabrication				X		
Interior decorating studio			X			
Jewelry store			X			
Junkyard, salvage yard, including storage, baling or selling of rags, papers, iron or junk, need not be enclosed within a structure, but must be enclosed within a fence at least six feet high and adequate to obstruct view, noise and passage of persons; chain-link or similar fencing may be permitted if screen planting is provided						X
Laboratory (dental or medical)			X			
Laboratory (research)			X			
Laboratory (testing)			X			
Landfill						X
Laundry and dry cleaning (self service)			X			
Laundry or dry cleaning (pickup station)			X			
Laundry plant				X		
Leather goods or luggage store			X			
Library (nongovernmental)						X
Linen supply, diaper service or uniform supply			X			
Loan office			X			
Locksmith			X			
Lumber yard and building materials (wholesale)			X			
Machine shop				X		
Machine, tools and construction equipment sales and service			X	X		
Marine and boat manufacturing				X		
Marine and boat storage						X
Mattress manufacturing and rebuilding				X		
Massage parlor			X			
Metal products fabrication				X		
Milliner (custom)			X			
Millinery manufacture				X		
Millwork and similar wood products manufacture				X		
Mobile Food Unit			X*	X	X	
Mobile Food Court						X**
Motel			X			
Motorcycle sales and service			X			
Moving and transfer company				X		
Music store			X			
Nail salon			X			
News stand			X			
Night club/dance hall						X
Novelty and souvenir manufacture				X		
Nursery, daycare, or kindergarten (care of up to six children)	X	X				
Nursery, daycare, or kindergarten (care of up to 20 children)			X			

Nursery, daycare, or kindergarten (care of over 20 children)			X			
Nursing home		X	X			
Office equipment and furniture manufacture				X		
Office equipment and supplies (retail)			X			
Office equipment and supplies (wholesale)			X	X		
Offices (professional)			X			
Oil and well supplies and machinery sales				X		
Optical goods (retail)			X			
Optical goods (wholesale)			X			
Optician			X			
Packing and gasket manufacture				X		
Packing plant (no rendering)						X
Paint and wallpaper store			X			
Paper produce manufacture				X		
Paper supplies (wholesale)				X		
Parks, playgrounds, community buildings and other public recreational facilities owned and/or operated by the city or other public agency					X	
Passenger depot (railroad or bus)						X
Pawnshop (completely enclosed)			X			
Pecan shelling				X		
Pet shop (completely enclosed)			X			
Petroleum storage (wholesale)				X		
Photographic equipment and supplies sales			X	X		
Photographic studio			X			
Picture framing			X			
Pipe storage				X		X
Pipeline and electrical transmission lines						X
Playground equipment manufacture				X		
Plumber			X			
Plumbing fixture sales (completely enclosed) (retail)			X			
Plumbing fixture sales (wholesale)			X	X		
Printer			X	X		
Public buildings, including libraries, museums, police stations and fire stations					X	
Radio station or studio, without transmitter tower						X
Radio station with transmitter tower						X
Reading room			X			
Recycling plant						X
Reducing salon			X			
Refrigerator equipment manufacture				X		
Restaurant			X			
Riding stable or academy						X
Roominghouse or boardinghouse						X
Rug and/or carpet sales			X			
Rug cleaning				X		

Sand or gravel storage yard				X		
Schools					X	
Shoe manufacture				X		
Shoe repair shop			X			
Shoe sales (retail)			X			
Shoe sales (wholesale) (completely enclosed)			X			
Sign, advertising (excluding business signs)			X			
Sign shop			X	X		
Sign shop (completely enclosed)			X			
Skating facility (outdoor)						X
Skating rink (enclosed)			X			
Small animal clinic or kennel			X			
Small animal clinic or kennel (completely enclosed)			X			
Sporting goods store			X			
Sporting goods (wholesale) (completely enclosed)			X	X		
Stamp, coin sales (retail)			X			
Stationery sales			X			
Stone cutting or monument manufacturing				X		
Stone monument sales			X			
Stone quarry or gravel pit				X		
Studio for professional work or teaching of any form of fine arts, photography, music, drama, dance, painting, etc.			X			
Surgical or dental supplies store			X			
Tanning salon			X			
Tattoo parlor						X
Tavern						X
Taxidermist						X
Television station or studio without transmitter tower			X			
Television station with transmitter tower						X
Textile manufacture				X		
Theater (indoor)			X			
Theater (outdoor, including drive-in theaters)						X
Tile manufacturer (ceramic)				X		
Tobacco processing				X		
Tobacco store			X			
Tool manufacture				X		
Tool rental (completely enclosed)			X			
Tool rental (fence outside storage)			X	X		
Toy manufacture			X	X		
Toy store			X			
Trailer manufacture				X		
Trailer sales			X			
Transit vehicle storage and service				X		
Truck repair and maintenance			X	X		
Truck stop						X

Variety store			X			
Venetian blinds and metal awning fabrication, repair and cleaning				X		
Veterinarian (animal on premises)			X			
Warehousing				X		
Watch repair			X			
Water or sewage pumping (nongovernmental)						X
Water storage (overhead)						X
Welding shop				X		
Well drilling contractors			X	X		

\* Mobile Food Units in the Historic Overlay Zone Requires Special Use Permit

\*\* Mobile Food Courts Require a Special Use Permit

(b) Any use not specifically permitted in this table or in the use regulations of each district set out below, shall require a special use permit (SEE Sec. 98-27. Special use permits)

( Ord. No. 2014-03 , § 1, 5-20-2014)

**SECTION 3.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect any of the remaining provisions of this Ordinance.

**SECTION 4.** All other ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this Ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this Ordinance on all ordinances or sections of the City Code not specifically amended or repealed shall remain in full force and effect.

**SECTION 5.** It is hereby officially found and determined that the meeting at which this Ordinance was considered 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 Open Meetings Act, Chapter 551, of the Texas Government Code.

**SECTION 6.** This Ordinance shall take effect immediately upon its passage and adoption.

**PASSED AND APPROVED** by the City Council of the City of Montgomery, Texas on the 13th day of June 2023.

\_\_\_\_\_  
Byron Sanford, Mayor

ATTEST:

\_\_\_\_\_  
Nicola Browe, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Alan P. Petrov, City Attorney

## Sec. 98-88. Table of permitted uses and special uses.

(a) Permitted uses and special uses in the various zoning districts are as specified in the following table:

Permitted Uses	R-1	R-2	B	ID	I	CC
Accessory uses						X
Aerial or ground survey			X			
Air conditioning sales, retail, complete enclosed (services incidental)			X			
Air conditioning-refrigeration services repair (completely enclosed) with no installation of central units — heating or cooling						X
Airport (nongovernmental)						X
Air product manufacturing				X		
Alcoholic beverage sales off premises			X			
Alcoholic beverage sales on premises						X
Alcoholic beverage storage			X			
Altering and repairing of wearing apparel			X			
Ambulance service			X			
Amusement arcade						X
Amusement park (commercial)						X
Animal shelter or dog pound (nongovernmental)						X
Antique store (completely enclosed)			X			
Apartment hotel						X
Apothecary, limited to the sale of pharmaceutical and medical supplies			X			
Apparel and accessory store			X			
Appliance repair (completely enclosed)			X			
Armory						X
Art gallery and/or museum (commercial retail sale of objects d'art only)			X			
Asphalt or creosote manufacturing or treatment						X
Assisted living		X	X			
Automobile and truck sales and service (new and used) (service completely enclosed)			X			
Automobile car wash			X			
Automobile filling station and/or service (all repair in district to be completely enclosed)			X			
Automobile glass sales and installation			X			
Automobile muffler sales and installation (completely enclosed)			X			
Automobile parking lots or parking garages (commercial)						X
Automobile rental			X			
Automobile repair			X			
Automobile upholstery sales and installation (completely enclosed)			X			

{00232209.docx }

Created: 2022-12-28 11:35:59 [EST]

(Supp. No. 6)

Automobile wrecking, dismantling or salvage (enclosed by fence)						X
Aviary						X
Bait store			X			
Bakery (retail)			X			
Bakery (wholesale)			X			
Barber shop			X			
Beauty salon			X			
Bed and breakfast	X		X			
Churches					X	
Community home as required by V.T.C.A., Human Resources Code § 123.003	X	X				
Compressed gas manufacturing, repacking and/or storage						X
Dairy equipment (wholesale) (completely enclosed)			X			
Dairy products sales (retail)			X			
Dairy products sales (wholesale)			X			
Delicatessen			X			
Department store			X			
Dog pound or animal shelter (nongovernmental)						X
Drug manufacture						X
Drug sales (wholesale)			X			
Drugstore			X			
Dry cleaning pickup and pressing shops			X			
Dry cleaning plant						X
Dry goods store			X			
Dry goods (wholesale) (completely enclosed)			X			
Electric power generator station (primary station)						X
Electric repair (appliances) (completely enclosed)			X			
Electric repair shop (heavy equipment)				X		
Electrical substation, to be enclosed by a fence or wall of minimum six feet in height, with physical installation being enclosed by a barrier which constitutes a visual screen. Visual screening would not be required in ID district				X		
Electrician			X			
Electroplating			X			
Elevator maintenance and service				X		
Exterminator (completely enclosed)			X			
Farm equipment sales and service (completely enclosed in B-2 district)			X			
Farm supplies			X			
Farming and truck gardening, but not for retail sales (permitted in any district)				X		
Feed store or seed and fertilizer			X			

Felt manufacture (cloth)				X		
Fish market (fenced outside storage)				X		
Fish market (retail)			X			
Fish market (wholesale)			X			
Fix-it shop (completely enclosed)			X			
Floor covering sales (retail completely enclosed)			X			
Floral shop (completely enclosed)			X			
Florist (wholesale) (completely enclosed)			X			
Food locker plant (retail)			X			
Food products (wholesale storage and sales)			X			
Food products manufacture and processing (not rendering)				X		
Food store			X			
Food to go (retail, no curb service)			X			
Foundry						X
Freight depot (railroad and/or truck)				X		
Fruit and produce (wholesale)			X			
Fruit and vegetable stand or store			X			
Funeral home, mortuary or undertaking establishment			X			
Fur dyeing, finishing and storing (no tanning, no hide storage)				X		
Furniture (wholesale sales)			X			
Furniture repair and upholstery (completely enclosed)			X			
Furniture repair and upholstery (fenced outside storage)			X			
Furniture store, retail (completely enclosed) (no repair)			X			
Furniture store, retail (fenced outside storage)			X			
Garage, public or storage				X		
Garden specialty store			X			
Gas filling station and/or service (all repairs to be completely enclosed)			X			
Gas regulation station (screening)				X		
Gift shop (completely enclosed)			X			
Glass (retail sales) (service incidental to sales) (completely enclosed)			X			
Glass (wholesale sales)			X			
Glass manufacturing and glass products manufacturing				X		
Golf course and country club, but no driving range, pitch and putt or miniature golf course						X
Golf driving range, pitch-and-putt or miniature golf course						X
Greenhouse or nursery, retail			X			
Greenhouse or nursery, wholesale				X		

Grocery (wholesale)			X			
Grocery store			X			
Gymnasium (commercial)			X			
Hair products manufacturing and processing				X		
Hardware manufacture				X		
Hardware sales (wholesale)			X			
Hardware store			X			
Heliport			X			
Hobby supply store			X			
Hosiery manufacture			X			
Hospital or sanitarium			X			
Hotel			X			
Ice cream and ice milk (retail)				X		
Ice cream manufacturer (wholesale)				X		
Ice cream store			X			
Ice house (no on-premises consumption of alcoholic beverages in B-1 district)			X			
Ice manufacture				X		
Insulation manufacture and fabrication				X		
Interior decorating studio			X			
Jewelry store			X			
Junkyard, salvage yard, including storage, baling or selling of rags, papers, iron or junk, need not be enclosed within a structure, but must be enclosed within a fence at least six feet high and adequate to obstruct view, noise and passage of persons; chain-link or similar fencing may be permitted if screen planting is provided						X
Laboratory (dental or medical)			X			
Laboratory (research)			X			
Laboratory (testing)			X			
Landfill						X
Laundry and dry cleaning (self service)			X			
Laundry or dry cleaning (pickup station)			X			
Laundry plant				X		
Leather goods or luggage store			X			
Library (nongovernmental)						X
Linen supply, diaper service or uniform supply			X			
Loan office			X			
Locksmith			X			
Lumber yard and building materials (wholesale)			X			
Machine shop				X		
Machine, tools and construction equipment sales and service			X	X		
Marine and boat manufacturing				X		
Marine and boat storage						X
Mattress manufacturing and rebuilding				X		

{00232209.docx }

Created: 2022-12-28 11:35:59 [EST]

(Supp. No. 6)



Massage parlor			X			
Metal products fabrication				X		
Milliner (custom)			X			
Millinery manufacture				X		
Millwork and similar wood products manufacture				X		
<u>Mobile Food Unit</u>			<u>X*</u>	<u>X</u>	<u>X</u>	
<u>Mobile Food Court</u>						<u>X**</u>
Motel			X			
Motorcycle sales and service			X			
Moving and transfer company				X		
Music store			X			
Nail salon			X			
News stand			X			
Night club/dance hall						X
Novelty and souvenir manufacture				X		
Nursery, daycare, or kindergarten (care of up to six children)	X	X				
Nursery, daycare, or kindergarten (care of up to 20 children)			X			
Nursery, daycare, or kindergarten (care of over 20 children)			X			
Nursing home		X	X			
Office equipment and furniture manufacture				X		
Office equipment and supplies (retail)			X			
Office equipment and supplies (wholesale)			X	X		
Offices (professional)			X			
Oil and well supplies and machinery sales				X		
Optical goods (retail)			X			
Optical goods (wholesale)			X			
Optician			X			
Packing and gasket manufacture				X		
Packing plant (no rendering)						X
Paint and wallpaper store			X			
Paper produce manufacture				X		
Paper supplies (wholesale)				X		
Parks, playgrounds, community buildings and other public recreational facilities owned and/or operated by the city or other public agency					X	
Passenger depot (railroad or bus)						X
Pawnshop (completely enclosed)			X			
Pecan shelling				X		
Pet shop (completely enclosed)			X			
Petroleum storage (wholesale)				X		
Photographic equipment and supplies sales			X	X		
Photographic studio			X			
Picture framing			X			
Pipe storage				X		X

{00232209.docx }

Created: 2022-12-28 11:35:59 [EST]

(Supp. No. 6)

Pipeline and electrical transmission lines						X
Playground equipment manufacture				X		
Plumber			X			
Plumbing fixture sales (completely enclosed) (retail)			X			
Plumbing fixture sales (wholesale)			X	X		
Printer			X	X		
Public buildings, including libraries, museums, police stations and fire stations					X	
Radio station or studio, without transmitter tower						X
Radio station with transmitter tower						X
Reading room			X			
Recycling plant						X
Reducing salon			X			
Refrigerator equipment manufacture				X		
Restaurant			X			
Riding stable or academy						X
Roominghouse or boardinghouse						X
Rug and/or carpet sales			X			
Rug cleaning				X		
Sand or gravel storage yard				X		
Schools					X	
Shoe manufacture				X		
Shoe repair shop			X			
Shoe sales (retail)			X			
Shoe sales (wholesale) (completely enclosed)			X			
Sign, advertising (excluding business signs)			X			
Sign shop			X	X		
Sign shop (completely enclosed)			X			
Skating facility (outdoor)						X
Skating rink (enclosed)			X			
Small animal clinic or kennel			X			
Small animal clinic or kennel (completely enclosed)			X			
Sporting goods store			X			
Sporting goods (wholesale) (completely enclosed)			X	X		
Stamp, coin sales (retail)			X			
Stationery sales			X			
Stone cutting or monument manufacturing				X		
Stone monument sales			X			
Stone quarry or gravel pit				X		
Studio for professional work or teaching of any form of fine arts, photography, music, drama, dance, painting, etc.			X			
Surgical or dental supplies store			X			

{00232209.docx }

Created: 2022-12-28 11:35:59 [EST]

(Supp. No. 6)

Tanning salon			X			
Tattoo parlor						X
Tavern						X
Taxidermist						X
Television station or studio without transmitter tower			X			
Television station with transmitter tower						X
Textile manufacture				X		
Theater (indoor)			X			
Theater (outdoor, including drive-in theaters)						X
Tile manufacturer (ceramic)				X		
Tobacco processing				X		
Tobacco store			X			
Tool manufacture				X		
Tool rental (completely enclosed)			X			
Tool rental (fence outside storage)			X	X		
Toy manufacture			X	X		
Toy store			X			
Trailer manufacture				X		
Trailer sales			X			
Transit vehicle storage and service				X		
Truck repair and maintenance			X	X		
Truck stop						X
Variety store			X			
Venetian blinds and metal awning fabrication, repair and cleaning				X		
Veterinarian (animal on premises)			X			
Warehousing				X		
Watch repair			X			
Water or sewage pumping (nongovernmental)						X
Water storage (overhead)						X
Welding shop				X		
Well drilling contractors			X	X		

\* [Mobile Food Units in the Historic Overlay Zone Requires Special Use Permit](#)

\*\* [Mobile Food Courts Require a Special Use Permit](#)

(b) Any use not specifically permitted in this table or in the use regulations of each district set out below, shall require a special use permit, ~~after approval by city council~~ [\(SEE Sec. 98-27. Special use permits\)](#).

( Ord. No. 2014-03 , § 1, 5-20-2014)

**City Council Workshop  
MINUTES**

**April 11, 2023, at 5:00 PM**

**CALL TO ORDER**

Mayor Byron Sanford called the workshop to order at 5:00 p.m.

- |               |                 |  |
|---------------|-----------------|--|
| Present:      | Byron Sanford   | Mayor  |
|               | Casey Olson     | City Council Place #2                                |
|               | Cheryl Fox      | City Council Place #4                                |
|               | Patricia Easley | City Council Place #5                                |
| Absent:       | T.J. Wilkerson  | City Council Place #3                                |
|               | Carol Langley   | City Council Place #1                                |
| Also Present: | Gary Palmer     | City Administrator                                   |
|               | Nici Browe      | City Secretary & Director of Administrative Services |

**Mayor Byron Sanford** welcomed everyone and informed them that no official action is being sought on this topic tonight, this is a workshop on the subject matter only.

**CONSENT AGENDA:**

1. Workshop on the proposed Mobile Food Unit/Mobile Food Court text amendments to Chapter 64 Peddlers, Solicitors, Vendors of the City Municipal Code AND Zoning Ordinance Section 98-88 Table of Permitted Uses and Special Uses

Mr. Gary Palmer, City Administrator informed Council and the audience that what they have before them is his recommendations for an update to the ordinance. The red strike throughs and red font are the changes that he is recommending.

He went on to describe the conflicts between the State code and city code due to the city code not being updated for such a long period of time.

He moved through the updated definitions and examined the exemption of Cottage Food Industry.

Mr. Palmer stated that in his proposed changes he would also place vendors under a special event as exempt from fee payments.

Mr. Palmer then went on to cover permitted uses.

He concluded his presentation by stating that the application would need to be cleaned up to insure it matches the changes in the code. The process would include a public hearing but before we get to that point, he wished to workshop it with council and get feedback, he had already taken it to Planning & Zoning Commission for their review.

Mayor Byron Sanford addressed the council and asked that they provide an open discussion and provide feedback and informed the audience that they would also get an opportunity to inject their thoughts and suggestions.

Councilmember Casey Olson stated that brick and mortar business owners have invested thousands of tax dollars into the city and should not be undercut by their competitor. He did not want vendors coming in and setting up and having better benefits to conduct business than those who have invested into the city. He added he wanted it to be equal across the board.

Mr. Palmer recognized the point Councilmember Casey Olson was making and stated he would pull the tax information on businesses and the vendors.

Councilmember Cheryl Fox stated that the commercial taxes have been raised considerably.

Mayor Sanford stated that is there going to be addressed the issue of gaining permission to sell like for like, as it doesn't appear to him that those businesses sell the same product.

Councilmember Casey Olson stated his point was about fairness, we have to be fair, so everyone pays the same fees, giving food truck vendors the ability to set up with just a vendor fee where businesses pay above and beyond, there is a disadvantage to being brick and mortar.

Councilmember Patricia Easley inquired if Food Trucks would only be allowed to operate in a food court only.

Councilmember Patricia Easley asked if Food trucks are not considered to be equal, as materially speaking they are site based.

Mr. Palmer responded that food trucks are not site based, they are license based. He went on to add that as we are a small staff one proposal is to change the current one, three and six month permits, to a flat for six months only. Logistically speaking this is more appropriate.

Mr. Palmer reasoned that six months will attract only those serious about doing business and abiding by the rules we have, and another difference will be that the fee will only be paid once the application has been reviewed and approved.

Mayor Sanford stated that 64.31 covers the issue with fairness.

Mr. Palmer stated he would pull property tax for the food businesses and delve into the fee schedule deeper.

Councilmember Patricia Easley stated that these are mobile vendors, not permanent establishments so should not be subject to the same fees as the brick-and-mortar businesses.

Councilmember Casey Olson disagreed and stated that over a year someone can operate long term and could come and go, whereas those established businesses have invested hundreds of thousands in some cases into the city. Where is fairness in allowing people to operate with the same items as those who are here full-time at less cost.

Councilmember Casey Olson and Councilmember Patricia Easley held a discussion on the practicalities and fairness of issuing temporary permits for food trucks.

Mayor Byron Sanford stated that he wants to make sure we as a city are responding to business owners' complaints.

Councilmember Patricia Easley voiced her concern that we are making it hard to do business.

Mr. Palmer stated that maybe there is validity to assessing a fee based on location. He went on to say that from the conversations here he can say that the sticking point is the fees, therefore, he will go back and pull tax information and comps and come back with alternatives.

**Sara Countryman, resident** stated that she had requested from the State the taxes and has yet to receive any information. She does know that 2% goes to the city.

**Bill Clevenger, resident** stated that as a food truck owner he does pay sales tax and he has proved this multiple times to previous administration staff, the way they are unique is that they do not pay property taxes.

**Julie Davis, resident** stated there is a big difference between tenants too as the renters of the coffee shop for instance have all of the start up costs, yet those like Bill's food trucks just show up for one fee, maybe one day. Those that come for a festival, trash our streets, tear up the roads and leave.

Mayor Sanford corrected Ms. Davis and stated that the coffee shop is owned by those operating it.

**Jeff Waddell, P&Z Chair and resident** stated that once Gary has crunched the numbers it would be clear the direction the city needs to take based on the revenues.

Councilmember Casey Olson went on to say if we continue down this path the food trucks will crush our restaurants, like the area for Minute Maid Park in Houston.

Councilmember Patricia Easley stated she disagreed with that statement as it is a totally different population down there.

**Jeff Waddell, P&Z Chair and resident** added that the real world is there is going to be competition for businesses, what the city needs is walkability and signage and felt the earlier statement of the food truck competing with those businesses around, he fails to see how a hotdog stand competes with a steak house.

Councilmember Casey Olson argued that it's not just the competition it's the reality that the customers to the food trucks are entering into the restaurants to use their bathrooms too, how is that fair.

Councilmember Patricia Easley commented how he could be sure that those asking for bathroom use are strictly from the food truck.

Councilmember Casey Olson responded because he has been told so by the business owners, and he wanted to point out that he is not opposed to food trucks at all but feels they should operate under the same terms as the brick-and-mortar establishments.

Councilmember Patricia Easley voiced her concern that the city is trying to amend and create policy based on a microcosm of a small area, the net should be cast wider, and we do not need to be reacting to personality conflicts between business owners and food truck vendors.

**Julie Davis, a resident**, suggested that the city place some signs downtown directing customers to the public restrooms.

The council collectively held a discussion on non-mobile versus mobile food unit and the definition thereof.

Mr. Palmer asked the council for their thoughts on maybe making a fee structure based on static and multiple locations.

Mr. Tony Gallucci, resident spoke to Council regarding the food trucks.

**Mr. Bill Clevenger** informed the Council that daily he picks up trash from folks walking around town and places that into his own trash, including booze cans. The city needs to focus on bringing people here to the downtown.

Mayor Byron Sanford asked if nonprofits (501c3) vendors are exempt from fees.

Ms. Browe, City Secretary confirmed that all nonprofit and 501 c3 vendors if they have placed that information on the application form will not be assessed a vendor's fee.

Mayor Byron Sanford thanked everyone for their input and closed the workshop.

**ADJOURNED: 6:00 P.M.**

Submitted by: \_\_\_\_\_  
Nici Browe, City Secretary

Date Approved: \_\_\_\_\_

\_\_\_\_\_  
Byron Sanford, Mayor

# PLANNING & ZONING COMMISSION RECOMMENDATION AND REPORT

TO: MONTGOMERY MAYOR AND CITY COUNCIL

FROM: PLANNING & ZONING COMMISSION

CC: GARY PALMER, CITY ADMINISTRATOR  
DAVE MCCORQUODALE, DIRECTOR OF PLANNING & DEVELOPMENT  
NICI BROWE, CITY SECRETARY

SUBJECT: REPORT CONCERNING PROPOSED AMENDMENTS TO SECTION 98-88 OF THE CITY CODE OF ORDINANCES (TABLE OF PERMITTED USES).

Mayor and Members of City Council,

Pursuant to Sections 98-30 and 98-53 of the City of Montgomery Code of Ordinances (“the Code”), the Montgomery Planning and Zoning Commission met on May 2, 2023 to consider proposed amendments to Section 98-88 of the City Code of Ordinances. After duly noticed public hearings with an opportunity for public comments concerning the proposed amendments, the Commission found:

- The Table of Permitted Uses does not currently address mobile food units or mobile food courts (also called food truck parks).
- The increase in popularity of mobile food units as well developments that include multiple mobile food units necessitates an update to city zoning regulations.
- By a vote of 5-0 the Planning and Zoning Commission hereby presents this Recommendation and Report pursuant to Section 98-30 of the City Code, recommending to **approve** the proposed amendments to Section 98-88 of the City Code.

I, Jeffrey Waddell, Chairman of the Montgomery Planning and Zoning Commission, certify this Report to be true and correct to the best of my knowledge.

Signed:   
Jeffrey Waddell, Chairman

Attest:   
Nici Browe, City Secretary



## MINUTES OF REGULAR MEETING

April 4, 2023

### MONTGOMERY PLANNING AND ZONING COMMISSION

#### CALL TO ORDER

Chairman Waddell declared a quorum was present and called the meeting to order at 6:00 p.m.

Present: Jeffrey Waddell, Bill Simpson, Merriam Walker, Daniel Gazda

Absent: Britnee Ghutzman

Also Present: Dave McCorquodale, Assistant City Admin. / Director of Planning & Development

#### VISITOR/CITIZENS FORUM

Mrs. Julie Davis, city resident, provided comments on agenda item #1. Mrs. Davis said she was opposed to the new fee schedule for mobile food vendors. She also shared concerns about one-time event vendors not wanting to pay for a 6-month permit and how charities and non-profits are regulated. She appreciated many of the other changes to the ordinance.

Jeff Waddell thanked the all the visitors for taking the time to attend the meeting.

#### **1. Proposed Text Amendments to Chapter 64 Peddlers, Solicitors Vendors and Section 98-88 Table of Permitted Uses and Special Uses to provide requirements for Mobile Food Units (Food Trucks) and Mobile Food Courts (Food Truck Parks).**

City Administrator Gary Palmer gave an overview of the proposed amendments to the ordinance and discussed the need for the changes with the Commission. Mr. Palmer said the City Council had asked him to address the vendor ordinance revisions as one of his first priorities after joining the city in January 2023. He said his process when asked to review ordinances is to connect with professional organizations and review other city's ordinances to find best practices to achieve the goal. He said the revisions under review reflect that process. Mr. Palmer said the revisions also include changes that bring our rules in line with current state law. The primary changes include defining mobile food courts and mobile food units, creating exemptions that exempt street festival

vendors from needing an individual permit. Those vendors would be able to operate under the street festival permit.

He said the changes to the vendor ordinance does not directly affect the P&Z Commission, but the proposed additions to the Table of Permitted Uses does require P&Z review and action. He explained that under the proposed amendments individual mobile food vendors within the Historic Preservation District would require a Special Use Permit along with mobile food courts. Jeff Waddell asked to confirm that two or more mobile food vendors on a property constituted a mobile food court. Mr. Palmer affirmed that point. Bill Simpson asked how the requirements for mobile food courts would be set; Mr. Palmer said that would be determined through the SUP process. The intent is to minimize red tape and adjust to circumstances as needed. Bill also asked about the county's 48-hour mobility requirement. Mr. Palmer said that is not actually a county requirement they can enforce, but the county does have that on their application. He went on to say that regulating mobility would be difficult to enforce and that the proposed vendor ordinance does not have mobility requirements for mobile food vendors.

Merriam Walker said there were food trucks downtown already and asked if a mobile food court would apply if one of the vendors moved in and out. Dan Gazda asked a follow up question regarding what the trigger was for a mobile food court. Mr. Palmer said two or more meant a food truck court whether it was only for a day or longer. Regarding the proposed fees, Mr. Palmer said he didn't want to get hung up on the amount of the permit and that it was a decision to be made by Council, but the city should set it high enough to ensure fly-by-night operations don't come to the city. Mr. Palmer said there was not consistency on fees between different cities and the goal should be a fair fee for the city and the vendor. He added that city council had requested a higher fee for mobile food vendors to provide parity between them and brick and mortar restaurants. Additional discussion was had on examples of events and individual vendors. Merriam Walker spoke to the proposed changes to the hours of operation and asked for clarification. Mr. Palmer said the next steps would be for P&Z to complete their review of the Table of Permitted Uses and transmit a recommendation to the City Council.

No action required or taken.

## MINUTES OF REGULAR MEETING

May 2, 2023

### MONTGOMERY PLANNING AND ZONING COMMISSION

#### **CALL TO ORDER**

Chairman Waddell declared a quorum was present and called the meeting to order at 6:01 p.m.

Present: Jeffrey Waddell, Bill Simpson, Merriam Walker, Daniel Gazda, Britnee Ghutzman

Absent: none

Also Present: Dave McCorquodale, Assistant City Admin. / Director of Planning & Development

#### **VISITOR/CITIZENS FORUM**

Two residents wished to speak on the rezoning request listed on the agenda. Their comments were held until the agenda item was considered by the Commission.

#### **1. Approval of the meeting minutes for March 7, 2023 and April 4, 2023.**

Jeff Waddell noted that the March 7, 2023 contained a typo—the word “side” should be used instead of “size” under Agenda Item #6 when referring to building setbacks on a lot. Staff noted the correction. Bill Simpson moved to approve the minutes as corrected. Dan Gazda seconded the motion, the motion carried unanimously. (5-0)

#### **2. Review and discussion on a proposed residential structure near the intersection of College and Pond Streets.**

Staff reviewed information provided by Mr. GERAL FAUSS, the property owner. The property is located in downtown behind Burger Fresh and is 35-feet wide by 25-feet deep. The owner provided historical images and a narrative that explain that the city’s old water tower used to be located on the site. His proposal that he would like feedback from the Commission on is for a residential dwelling designed to be similar in form to a water tower. The living quarters would be elevated at the height of a second-story like a water tower and there would be two parking spaces below. Mr. Fauss stated he would like to know if the property is buildable since the county appraisal district

had increased his taxes exponentially this year. Staff stated the city attorney could provide an answer on what steps would need to be taken since the lot size is so small relative to required setbacks. The Commission generally appreciates the idea of preserving the history of the water tower site and felt that the structure would be a unique addition to downtown if the setback issues can be worked out. The Commission also provided feedback on the computer mock-up image provided by the owner and preferred a form with less mass, or one that was more open. Mr. Fauss said he understood and wanted to get feedback from the city before hiring an engineer and architect to design the structure. No action needed or taken by the Commission, and they thanked Mr. and Mrs. Fauss for attending the meeting to discuss the item.

**3. Consideration and possible action on a draft Preliminary Report for a rezoning request from R1-Single Family Residential to B-Commercial for 14640 Liberty Street, Montgomery, Texas as submitted by Evan Ballew.**

Staff reviewed the draft report. Jeff Waddell asked if the applicant was in attendance. Mr. Ballew confirmed he was. Merriam Walker stated she had driven in the area after the last meeting. She asked if the property was rezoned to commercial and the owner sold the property, would it stay commercial. Staff affirmed that it would and any uses listed in the Table of Permitted uses for B-Commercial would be allowed by right. She asked if the property was big enough for something like a gas station. Staff said it was not, but a future owner could acquire adjacent property and request it be rezoned to commercial to create a larger site. Bill Simpson asked if the applicant knew the depth of the lot. Mr. Ballew said it was 1/3-acre and roughly 200-feet deep. Britnee Ghutzman said the traffic counts and visibility along FM 149 make commercial suitable along the corridor. Dan Gazda agreed. Ms. Ghutzman said her concern was the residential properties surrounding this property and making sure that adequate buffers were in place for light, sound, etc. to preserve the integrity of the residential properties.

Bill Simpson said he was concerned with uniformity of the properties with existing residential properties on FM 149. He continued that he felt it would be a long time before a significant number of these properties would be commercial. Jeff Waddell mentioned an effort several years ago to fix up old houses. He said he felt there was contradiction by the city in the Future Land Use Plan and encouraging people to fix up houses. Mr. McCorquodale said he didn't see a contradiction since the two initiatives had different purposes. He continued that the MEDC had funded a removal

of blight program for dilapidated structures several years ago and the HOME grant program built new homes for several residents in past years. Merriam Walker said if this property was developed like Arnette Easley's property down the street that was in scale with the surroundings that she could see that as a possibility. She mentioned the city of Tomball where a number of old homes were now used as businesses along busy streets. Merriam said if the city wanted improvement along the corridor, we'd have to be willing to give and take.

Jeff Waddell suggested a Special Use Permit as a possible alternative to rezoning to commercial. Mr. Ballew said the property had been on the market for 7 months because no one wants to purchase a home on a road as busy as FM 149 North. He said he wanted to improve the property by painting the exterior of the house, adding several parking spaces and a sign for his real estate office. Mr. Ballew said there are limited options for small professional office space in the city. Bill Simpson asked if the existing driveway was paved and whether the new parking spaces would be paved. Mr. Ballew affirmed they were paved. Jeff Waddell said the primary issue to him was the future types of commercial activity if the property was rezoned and reiterated that a Special Use Permit would allow the owner to use the property as he intends and allow the city to place some restrictions on the intensity of the commercial activity on the property. Mr. McCorquodale said he would discuss whether an SUP could be used with the city attorneys to confirm it is a possible tool to use in this case. Britnee Ghutzman said her background as an appraiser suggests that the highest and best use for the property is commercial. Merriam Walker said she was also leaning toward commercial property but was concerned about a future gas station or similar use. Mr. Ballew said he felt that people would likely not want to invest in these properties as homes because of the volume of traffic on FM 149. Merriam Walker asked if he had met the neighboring property owners. Mr. Ballew said he had considered it but had not reached out to any of them.

Merriam asked the owner if he planned to live in the residence. He said he does not. She asked the owner how long he had been in Montgomery. He said he grew up in Montgomery and had lived here since 1998. Jeff Waddell suggested moving to the Public Hearing item to continue discussion. No revisions or edits to the Preliminary Report were requested by the Commission.

Daniel Gazda moved to approve the Preliminary Report as presented. Merriam Walker seconded the motion, the motion carried unanimously. (5-0)

4. **Convene into Public Hearing #1 on the Preliminary Report for a rezoning request from R1-Single Family Residential to B-Commercial for 14640 Liberty Street, Montgomery, Texas as submitted by Evan Ballew.**

Jeff Waddell opened the hearing at 6:46 p.m.

Sara Countryman addressed the Commission and said she lives in the neighborhood behind the subject property. She questioned why the applicant purchased the property before rezoning it and did not discuss it with the city and took issue it. She said while a gas station would not fit on this property, someone could purchase adjacent properties to have a bigger site. She also said there were other options in the city for professional office space, including Shanon Salsbury's spaces about a mile from this property. Ms. Countryman also asked what a rezoning action might do for appraisal values of surrounding properties. She said she was opposed to the request and urged the Commission to consider the residential areas around this property. She added that deed and title information for many of the surrounding properties were unclear and that would hamper the redevelopment of the corridor.

Evan Ballew, the applicant, stated he did discuss the property and rezoning with city staff and that it was a calculated decision he had to make when purchasing the property. He said his office team needs more office space than what's available in town. Mr. Ballew said he understood the concern about any commercial use of the property but his intent is to use for professional office space. Mr. Ballew said he was following the process as he understood it and was not trying to hoodwink anyone.

Bill Simpson said he felt like some of the confusion may have been coming from the Future Land Use Plan. He asked where the Future Land Use Plan came from. Jeff Waddell asked if there was anyone else who wanted to speak during the Public Hearing.

Julia Denison stated she lived behind the subject property and had lived there for 8 years. She said they had a lot invested in their home and she has concerns about the other properties being rezoned and possibly bring a strip center and nuisances that would affect their property. She said her realtor told her the property on FM149 would never be commercial and she opposed the rezoning request.

Jeff Waddell thanked the citizens for their input and said that the Commission had heard both sides of the discussion. Mr. McCorquodale said he had one comment from a property owner who could not attend the meeting and that their family opposed the rezoning request. Ms. Annie Butler represented the estate of Edna Jackson across the street from the subject property.

The hearing closed at 7:01 p.m.

**5. Convene into Public Hearing #2 on the Preliminary Report for a rezoning request from R1-Single Family Residential to B-Commercial for 14640 Liberty Street, Montgomery, Texas as submitted by Evan Ballew.**

Jeff Waddell opened the hearing at 7:03 p.m. Britnee Ghutzman asked if the citizens had any suggestions for a buffer between the residential neighborhood behind the property and this property. No additional comments given by the public. The hearing closed at 7:04 p.m.

**6. Consideration and possible action on a Final Report for a rezoning request from R1-Single Family Residential to B-Commercial for 14640 Liberty Street, Montgomery, Texas as submitted by Evan Ballew.**

Staff reviewed the draft report included them in the packet and reminded the Commission the draft was a starting point and that they should edit the report to reflect their recommendation and considerations. Merriam Walker asked about bullet #2 that said the city's Future Land Use Plan identifies this corridor as future B-Commercial. Staff affirmed that was a correct statement. She asked the residents if they were aware of the Future Land Use Plan. She continued by asking when the plan became public knowledge. Mr. McCorquodale said he did not know the exact date but believed it was around 2015 or 2016. She asked if the plan identified the corridor as B-Commercial whether there was an option of allowing "light commercial" or "neighborhood commercial" or whether it was full commercial. Staff stated the only tool we had at present was full B-Commercial. Jeff Waddell said the Commission needed clarity on whether the Future Land Use Plan was official or not. Mr. McCorquodale said the plan was not officially adopted by the Council, but it is the only tool the city has that looks to future land use when considering rezoning requests. He also reminded the Commission that they do not have to follow the Future Land Use Plan when making a recommendation to City Council, it is a guide to consider as part of the request. Merriam Walker asked if a large percentage of the homes in the area have title issues, Ms. Countryman stated many

of the homes in this area did have unclear titles. After additional discussion on points related to traffic, future commercial development in the area, and some of the surrounding residences, Merriam Walker asked to confirm that the draft can be amended to suit the preference of the Commission. Staff affirmed it could. Britnee Ghutzman asked what the side and rear setbacks would be. Mr. McCorquodale said there would be a 25-foot setback and vegetative buffer where commercial abuts residential. Merriam Walker stated that many applicants have presented a vision for a proposed development and when it's built, she felt like it wasn't the same as the vision that was presented to P&Z. Bill Simpson asked if the city could place conditions on a Special Use Permit like transfer of ownership. Staff affirmed the city could. Merriam Walker asked if the city could place a timeframe on the SUP, and staff affirmed they could. Britnee Ghutzman said from an appraisal standpoint, surrounding properties are generally not affected by the rezoning of a neighboring property, but there are exceptions. Jeff Waddell said he saw potential in a Special Use Permit but wasn't comfortable with a commercial rezoning.

Britnee Ghutzman moved to approve the Final Report recommending rezoning of the property to B-Commercial. Merriam Walker seconded the motion. The vote was 3-2 with Jeff Waddell and Bill Simpson opposed.

Following the vote, the Commission had questions on the intent of the previous vote and wished to discuss amending the Final Report. Dan Gazda said he'd misunderstood the intent of the motion and that he favored an SUP over a rezoning to commercial. Following a brief discussion, staff asked the Commission to restate a motion and take another vote due to confusion on the previous motion.

Dan Gazda moved to approve the Final Report with the change that P&Z recommends to NOT approve the rezoning request in order to ensure adequate protection for the residential properties around the subject property. Bill Simpson seconded the motion. The vote was 3-2 with Britnee Ghutzman and Merriam Walker opposed.

**7. Consideration and possible action on a Preliminary Report for proposed amendments to Section 98-88 (Table of Permitted Uses) of the City Code of Ordinances.**

Staff introduced the information and reminded the Commission of the presentation of the Mobile Food Vendor Ordinance revisions by city administrator Gary Palmer at the April meeting. Mr.



Palmer reviewed those revisions and also proposed two related amendments to the Table of Permitted Uses that would require Food Truck Courts as well as individual food trucks within the Historic Preservation District to obtain a Special Use Permit to operate. Bill Simpson said he appreciated the changes Mr. Palmer recommended at the last meeting. Britnee Ghutzman said she spoke with several food truck operators and that some cities issue a business permit for food vendors, and some have limits on the number of permits issued in a year. Britnee said she also had questions about permitting traditional ice cream trucks that drive through neighborhoods. Mr. McCorquodale said conventional ice cream trucks were excluded from the proposed food vendor regulations. Merriam Walker asked if staff had looked into the charity aspect of the proposed changes. Mr. McCorquodale said he was not actively working on the vendor ordinance revisions.

Bill Simpson moved to approve the Preliminary Report as presented. Daniel Gazda seconded the motion, the motion carried unanimously. (5-0)

**8. Convene into Public Hearing #1 on a Preliminary Report for proposed amendments to Section 98-88 of the City Code of Ordinances (Table of Permitted Uses).**

Jeff Waddell opened the hearing at 8:00 p.m. Staff introduced Manny and Michael, the owners and proposed developers of a mobile food court on the north end of downtown. Manny said he appreciated the city’s help in their process of development, but they are not going to pursue the project and will be selling the property. No comments were given by the public before or at the meeting. The hearing closed at 8:03 p.m.

**9. Convene into Public Hearing #2 on a Preliminary Report for proposed amendments to Section 98-88 of the City Code of Ordinances (Table of Permitted Uses).**

Jeff Waddell opened the hearing at 8:04 p.m. No comments on the Preliminary Report were given by the public before or at the meeting. The hearing closed at 8:05 p.m.

**10. Consideration and possible action on a Final Report for proposed amendments to Section 98-88 (Table of Permitted Uses) of the City Code of Ordinances.**

Staff reviewed the information provided in packet on the draft Final Report. Britnee Ghutzman asked if the proposed changes still required mobile food operators to still get permission from

property owners to be on site, staff confirmed they did. She also asked if there was a mobility requirement for mobile food vendors in the proposed ordinance, staff said there were not.

Bill Simpson moved to approve the Final Report as presented. Britnee Ghutzman seconded the motion, the motion carried unanimously. (5-0)

**Commission Inquiry**

Jeff Waddell mentioned the townhome zoning district idea from the last meeting and asked to keep it on the list of discussion points for rezoning revisions to discuss at the next joint workshop. Jeff also mentioned the area behind Memory Park for a playground area for children. Mr. McCorquodale said there is a portion of land on the east side of the park that is an HOA reserve and the city is working on an agreement to use the reserve as part of the open space of the park.

**Adjournment**

Britnee Ghutzman moved to adjourn the meeting at 7:55 p.m. Merriam Walker seconded the motion, the motion carried unanimously. (4-0)

Prepared by: \_\_\_\_\_ Date approved: \_\_\_\_\_  
Dave McCorquodale

\_\_\_\_\_  
Chairman Jeffrey Waddell

Attest: \_\_\_\_\_  
Nici Browe, City Secretary

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date:</b> June 13, 2023	<b>Budgeted Amount:</b> N/A
<b>Department:</b> Administration	<b>Prepared By:</b> G. Palmer

**Subject**

Call for City Council Workshops for the Remainder of 2023

**Recommendation**

Approve the proposed City Council Workshop dates as proposed

**Discussion**

We have discussed the need for City Council workshops. Workshops provide a public forum for the City Council and city staff/consultants to informally discuss projects/programs/policies/initiatives without taking formal action. Moreover, workshops serve as an essential forum for the City Council to ask questions, clarify their position, and deliberate. Items from workshops must be moved to a regular meeting agenda in order for action to be taken by the Council.

In your packets, please find the proposed dates for these workshops for the remainder of 2023.

<b>Approved By</b>		
		Date:
City Administrator	Gary Palmer	Date: June 07, 2023

**REMAINDER OF 2023  
PROPOSED CITY COUNCIL WORKSHOP SCHEDULE**

JULY 11, 2023	5PM-6PM (IMMEDIATELY BEFORE REGULAR MEETING; GENERAL WORKSHOP ITEMS)
JULY 24, 2023	4PM-6PM (BUDGET WORKSHOP)
JULY 31, 2023	4PM-6PM (BUDGET WORKSHOP)
AUG 07, 2023	4PM-6PM (BUDGET WORKSHOP)
AUG 22, 2023	5PM-6PM (IMMEDIATELY BEFORE REGULAR MEETING; BUDGET WORKSHOP)
SEP 11, 2023	4pm-6pm (FINAL BUDGET WORKSHOP AND GENERAL WORKSHOP ITEMS)
SEP 25, 2023	5PM-6PM (GENERAL WORKSHOP ITEMS)
OCT 23, 2023	5PM-6PM (GENERAL WORKSHOP ITEMS)
NOV 06, 2023	5PM-6PM (GENERAL WORKSHOP ITEMS)
DEC 04, 2023	5PM-6PM (GENERAL WORKSHOP ITEMS)

**INTERLOCAL COOPERATION AGREEMENT BETWEEN CITY OF  
MONTGOMERY, TEXAS AND MONTGOMERY COUNTY, TEXAS**  
(Buffalo Springs Dr. and Lone Star Parkway Intersection Improvements)

This Interlocal Cooperation Agreement (“Agreement”) is made and entered into by and between **City of Montgomery, Texas**, a body corporate and politic under the laws of the State of Texas, hereinafter called "City" and **Montgomery County**, a body corporate and politic under the laws of the State of Texas, hereinafter called “County” in accordance with the Interlocal Cooperation Act, Tex. Gov’t Code Ch. 791.001 *et seq.* City and County may also be referred to individually herein as a "Party", or collectively as the "Parties".

**RECITALS:**

WHEREAS, it is of the mutual benefit of the Parties to improve mobility within the City and in the unincorporated areas of the County outside of the City.

WHEREAS, the Parties desire to share the responsibilities and costs to improve and to reconfigure the intersection of Buffalo Springs Drive and Lone Star Parkway into a traffic circle (the “Project”).

WHEREAS, the Project is located in within the municipal limits of the City, and in Montgomery County.

NOW THEREFORE, the Parties desire to proceed with the design and construction of the Project in accordance with this Agreement.

I. Responsibilities of the Parties

- A. County Responsibilities. Upon execution of this Agreement by the Parties, County shall:
- i) Provide engineering and related support services necessary to prepare plans, specifications, and estimates (“PS&E”) for construction of the Project;
  - ii) Submit such PS&E to City for review and approval;
  - iii) Identify any utility and/or pipelines in conflict with construction of the Project;
  - iv) Coordinate and relocate any utilities and/or pipelines found to be in conflict with the construction of the Project;
  - v) Obtain all necessary approvals and/or permits from any jurisdictional agencies;
  - vi) Advertise for and receive bids for the construction of the Project in accordance with the PS&E in the manner similar to that of other like County projects.
  - vii) Upon receipt and tabulation of bids for the Project, County will determine the lowest responsible bidder for the construction of the Project. It is expressly agreed and understood that County reserves the right to reject all bids. If County, in its discretion, rejects all bids, then County may within thirty (30) days from the date of rejection of all bids either (a) re-advertise for bids pursuant to the same understanding with regard to rejection of bids, or (b) terminate this Agreement and return all funds, if any, received from City.



- ix) Upon approval of the PS&E by City, and receipt of funds from City pursuant to Section II below, County shall award the contract for construction of the Project to the lowest and best bidder in accordance with the usual and customary procedures of County. County's determination of the lowest and best bid for the Project shall be final and conclusive.
- x) Provide the County funding share being fifty percent (50%) of the total design and construction costs for the Project ("County Share"), subject to the provisions set forth in Section III below.
- xi) Provide and manage the day-to-day construction of the Project, including construction materials testing ("CMT"). During the construction of the Project, City shall have the right of access to the construction site and shall have the right to review all documents, maps, plats, records, photographs, reports or drawings affecting said construction, provided, however, City shall not interfere with the work in progress;
- xii) Upon substantial completion of the construction of the Project, and again at 100% completion, provide an opportunity for City representatives to participate in a walk through to develop a punch list; and
- xiii) Upon final acceptance of the Project by the Parties, provide a set of record drawings, which have been signed and sealed by the Project Engineer to City;

B. City Responsibilities. Upon execution of this Agreement by the Parties, City shall:

- i) Review the PS&E prepared by County for the Project and provide objections or approval to County within ten (10) days of receipt by City. City agrees that approval will not be unreasonably withheld, and County may proceed as if approved in the event City has not provided any objections or approval within the ten (10) days aforementioned; and
- ii) Provide the City funding share being fifty percent (50%) of the design and construction costs for the Project, not to exceed Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00), (hereinafter defined as "City's Share"), subject to the provisions set forth in Section III below, in accordance with Section II below.

## II. Terms of Payment

Upon the acceptance of the bid or award by County, County will invoice City for the City's Share, and City shall remit payment of the City's Share to County on or before forty-five (45) days of City's receipt of such invoice. Within 30 days of the completion of the Project, County shall submit to the City for approval a final accounting of the project costs including the final City's Share and City shall remit payment of the City's Share to County on or before forty-five (45) days of City's receipt of such final accounting and invoice. The final City's Share for the Project shall be based on all project costs incurred to date for the Project, but shall not exceed Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00).

### III. Limitations of Appropriation

County and City acknowledge and agree that before County and City may pledge any amount of funds for any reason, funds must be appropriated and certified as available by each Party's respective financial auditor from current fiscal funds.

### IV. Term and Termination

This Agreement is effective as of the date it has been approved and executed by all Parties ("Effective Date") and shall remain in full force and effect until the completion of the Project or County's receipt of payment from City of all funds due and owing under the terms of this Agreement, whichever occurs later, unless earlier terminated in accordance with the terms of this Agreement.

City may terminate this Agreement at any time prior to the awarding of the contract for construction of the Project, or as otherwise allowed under this Agreement, by thirty (30) days' written notice to the County, and City shall have no further obligation hereunder and be entitled to receive any unexpended funds paid to County by City including any interest earned on said funds paid to County by City pursuant to this Agreement

County may terminate this Agreement at any time prior to the awarding of the contract for construction of the Project, or as otherwise allowed under this Agreement, by thirty (30) days' written notice to City. In the event of termination by County, County will have no further obligation pursuant to this Agreement, other than to return any unexpended funds paid to County by City. .

### V. Notice

All notices required under this Agreement ("Notice") shall be in writing and shall be duly served when it shall have been personally delivered to the address below, or deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the Parties at the following addresses:

#### **MONTGOMERY COUNTY:**

Montgomery County, Texas  
 Attn: Commissioner Robert Walker  
 510 Hwy 75 North  
 Willis, Texas 77378  
 Email: [Commissioner.Walker@mctx.org](mailto:Commissioner.Walker@mctx.org)

With a copy to:

B.D. Griffin, County Attorney  
 501 N. Thompson, Suite 300  
 Conroe, Texas 77301  
 Email: [bd.griffin@mctx.org](mailto:bd.griffin@mctx.org)



**CITY OF MONTGOMERY:**

City of Montgomery, Texas  
 Attn: Gary Palmer  
 101 Old Plantersville Rd.  
 Montgomery, Texas 77316  
 Email: [gpalmer@ci.montgomery.tx.us](mailto:gpalmer@ci.montgomery.tx.us)

With a copy to:

Johnson Petrov LLP, City Attorney  
 Attn: Alan P. Petrov, Managing Partner  
 2929 Allen Parkway, Suite 3150  
 Houston, Texas 77019

Each Party shall have the right to change its respective address to any other address in the State of Texas by giving at least fifteen (15) days written notice of such change to the other Parties.

Other communications, except for Notices required under this Agreement, may be sent by electronic means or in the same manner as Notices described herein.

#### VI. Assignment

County and City bind themselves and their successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither County nor City shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld.

#### VII. Counterparts and Electronic Signature

Pursuant to the requirements of the Uniform Electronic Transactions Act in Chapter 322 of the Texas Business and Commerce Code and the Federal Electronic Signatures in Global and National Commerce Act (beginning at 15 U.S.C. Section 7001), the Parties have agreed that the transactions under this Agreement may be conducted by electronic means. Pursuant to these statutes, this Agreement may not be denied legal effect or enforceability solely because it is in electronic form or because it contains an electronic signature. This Agreement may be executed in duplicate counterparts and with electronic or facsimile signatures with the same effect as if the signatures were on the same document. Each multiple original of this document shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.

#### VIII. Independent Parties.

It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to constitute or create a joint venture, partnership, association or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement.



County is an independent contractor and neither it, nor its employees or agents shall be considered to be an employee, agent, partner, or representative of City for any purpose. City, nor its employees, officers, or agents shall be considered to be employees, agents, partners or representatives of County for any purposes. Neither Party has the authority to bind the other Party.

IX. No Third Party Beneficiaries.

County is not obligated or liable to any party other than City for the performance of this Agreement. Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies upon any third party. Further, nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to increase the rights of any third party, or the duties or responsibilities of County with respect to any third party.

X. Waiver of Breach.

A waiver by either Party of a breach or violation of any provision of the Agreement shall not be deemed or construed to be a waiver of any subsequent breach.

XI. No Personal Liability; No Waiver of Immunity.

- A. Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the County.
- B. The Parties agree that no provision of this Agreement extends the Parties' liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
- C. Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by County or City of any right, defense, or immunity on behalf of themselves, their employees or agents under the Texas Constitution or the laws of the State of Texas.

XII. Applicable Law and Venue.

This Agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Conroe, Montgomery County, Texas.

XIII. No Binding Arbitration; Right to Jury Trial.

Neither party agrees to binding arbitration, nor waives its right to a jury trial.

XIV. Contract Construction.

This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement. The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement. When terms are used in the singular or plural, the meaning shall apply to both. When either the male or female gender is used, the meaning shall apply to both.

XV. Recitals.

The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.

XVI. Entire Agreement; Modifications.

This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement supersedes and replaces any prior agreement between the Parties pertaining to the rights granted and the obligations assumed herein. This Agreement shall be subject to change or modification only by a subsequent written modification approved and signed by the governing bodies of each Party.

XVII. Severability.

The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person, entity, or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons, entities, or circumstances shall not be affected thereby.

XVIII. Survival of Terms.

Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.

XIX. Multiple Counterparts/Execution.

This Agreement may be executed in several counterparts. Each counterpart is deemed an original and all counterparts together constitute one and the same instrument. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.

EXECUTED BY THE PARTIES ON THE RESPECTIVE DATES SHOWN BELOW.

*[Signatures are contained on one or more separate execution pages]*



EXECUTED ON THE \_\_\_ DAY OF \_\_\_\_\_, 2023.

**MONTGOMERY COUNTY, TEXAS**

By: \_\_\_\_\_  
Mark J. Keough, County Judge

Attest:

\_\_\_\_\_  
Mark Turnbull, County Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
B. D. Griffin, County Attorney

EXECUTED ON THE 14th DAY OF February, 2023.

**CITY OF MONTGOMERY TEXAS**

By: Byron Sanford  
Byron Sanford, Mayor

Date: 14th February , 2023.

Attest:

Nici Browe  
Nici Browe, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Alan P. Petrov, City Attorney



**B. D. GRIFFIN**  
County Attorney  
Montgomery County

501 N. Thompson  
Suite # 300  
Conroe, Texas 77301

936/539-7828  
Fax 936/760-6920

September 29, 2022

Alan P. Petrov  
Johnson Petrov, LLP  
2929 Allen Parkway, Suite 3150  
Houston, TX 77019

Re: *Interlocal Cooperation Agreement between City of Montgomery, Texas and Montgomery County, Texas for Lone Star Parkway at Town Creek Bridge*

Dear Mr. Petrov:

Enclosed please find two (2) original counterparts of the above-captioned agreement which have been executed by Montgomery County. Please have the authorized representatives of the City of Montgomery execute the counterparts and return one (1) executed counterpart to me for recording in the Commissioners Court records.

Thank you for your cooperation in this matter. Please contact me with any questions.

Sincerely,

  
B. D. Griffin

BDG/

Enclosures



Item 6.

#5 10 N 1

**INTERLOCAL COOPERATION AGREEMENT BETWEEN CITY OF  
MONTGOMERY, TEXAS AND MONTGOMERY COUNTY, TEXAS**  
(Lone Star Parkway at Town Creek Bridge)

This Interlocal Cooperation Agreement (“Agreement”) is made and entered into by and between **City of Montgomery, Texas**, a body corporate and politic under the laws of the State of Texas, hereinafter called "City" and **Montgomery County**, a body corporate and politic under the laws of the State of Texas, hereinafter called “County” in accordance with the Interlocal Cooperation Act, Tex. Gov’t Code Ch. 791.001 *et seq.* City and County may also be referred to individually herein as a "Party", or collectively as the "Parties".

**RECITALS:**

WHEREAS, it is of the mutual benefit of the Parties to improve mobility within the City in the unincorporated areas of the County outside of the City.

WHEREAS, the Parties desire to share the responsibilities and costs to make emergency repairs to the bridge on Lone Star Parkway at Town Creek (east of Plez Morgan Dr.), which bridge is currently within the municipal limits of the City but which has not been accepted into the City maintenance program (“Project”).

WHEREAS, the Project is located in within the municipal limits of the City, and in Montgomery County.

NOW THEREFORE, the Parties desire to proceed with the design and construction of the Project in accordance with this Agreement.

I. Responsibilities of the Parties

A. County Responsibilities. Upon execution of this Agreement by the Parties, County shall:

- i) Provide engineering and related support services necessary to prepare plans, specifications, and estimates (“PS&E”) for construction of the Project;
- ii) Submit such PS&E to City for review and approval;
- iii) Identify any utility and/or pipelines in conflict with construction of the Project;
- iv) Coordinate and relocate any utilities and/or pipelines found to be in conflict with the construction of the Project;
- v) Obtain all necessary approvals and/or permits from any jurisdictional agencies;
- vi) Advertise for and receive bids for the construction of the Project in accordance with the PS&E in the manner similar to that of other like County projects.
- vii) Upon receipt and tabulation of bids for the Project, County will determine the lowest responsible bidder for the construction of the Project. It is expressly agreed and understood that County reserves the right to reject all bids. If County, in its discretion, rejects all bids, then County may within thirty (30) days from the date of rejection of all bids either (a) re-advertise for bids pursuant to the same understanding with regard to rejection of bids, or (b) terminate this Agreement and return all funds, if any, received from City.

1

113

- ix) Upon approval of the PS&E by City, and receipt of funds from City pursuant to Section II below, County shall award the contract for construction of the Project to the lowest and best bidder in accordance with the usual and customary procedures of County. County's determination of the lowest and best bid for the Project shall be final and conclusive.
- x) Provide the County funding share being fifty percent (50%) of the total design and construction costs for the Project ("County Share"), subject to the provisions set forth in Section III below.
- xi) Provide and manage the day-to-day construction of the Project, including construction materials testing ("CMT"). During the construction of the Project, City shall have the right of access to the construction site and shall have the right to review all documents, maps, plats, records, photographs, reports or drawings affecting said construction, provided, however, City shall not interfere with the work in progress;
- xii) Upon substantial completion of the construction of the Project, and again at 100% completion, provide an opportunity for City representatives to participate in a walk through to develop a punch list; and
- xiii) Upon final acceptance of the Project by the Parties, provide a set of record drawings, which have been signed and sealed by the Project Engineer to City;

B. City Responsibilities. Upon execution of this Agreement by the Parties, City shall:

- i) Review the PS&E prepared by County for the Project and provide objections or approval to County within ten (10) days of receipt by City. City agrees that approval will not be unreasonably withheld, and County may proceed as if approved in the event City has not provided any objections or approval within the ten (10) days aforementioned; and
- ii) Provide the City funding share being fifty percent (50%) of the design and construction costs for the Project, not to exceed One Hundred Thousand and no/100 Dollars (\$100,000.00), (hereinafter defined as "City's Share"), subject to the provisions set forth in Section III below, in accordance with Section II below.

## II. Terms of Payment

Upon the acceptance of the bid or award by County, County will invoice City for the City's Share, and City shall remit payment of the City's Share to County on or before forty-five (45) days of City's receipt of such invoice. Within 30 days of the completion of the Project, County shall submit to the City for approval a final accounting of the project costs including the final City's Share and City shall remit payment of the City's Share to County on or before forty-five (45) days of City's receipt of such final accounting and invoice. The final City's Share for the Project shall be based on all project costs incurred to date for the Project

## III. Limitations of Appropriation

County and City acknowledge and agree that before County and City may pledge any amount of funds for any reason, funds must be appropriated and certified as available by each Party's respective county auditor from current fiscal funds.



#### IV. Term and Termination

This Agreement is effective as of the date it has been approved and executed by all Parties ("Effective Date") and shall remain in full force and effect until the completion of the Project or County's receipt of payment from City of all funds due and owing under the terms of this Agreement, whichever occurs later, unless earlier terminated in accordance with the terms of this Agreement.

City may terminate this Agreement at any time prior to the awarding of the contract for construction of the Project, or as otherwise allowed under this Agreement, by thirty (30) days' written notice to the County, and City shall have no further obligation hereunder.

County may terminate this Agreement at any time prior to the awarding of the contract for construction of the Project, or as otherwise allowed under this Agreement, by thirty (30) days' written notice to City. In the event of termination by County, County will have no further obligation pursuant to this Agreement, other than to return any unexpended funds paid to County by City. In addition, any interest earned on said funds paid to County by City pursuant to this Agreement will become the sole property of County.

#### V. Notice

All notices required under this Agreement ("Notice") shall be in writing and shall be duly served when it shall have been personally delivered to the address below, or deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the Parties at the following addresses:

##### **MONTGOMERY COUNTY:**

Montgomery County, Texas  
 Attn: Commissioner Robert Walker  
 510 Hwy 75 North  
 Willis, Texas 77378  
 Email: [Commissioner.Walker@mctx.org](mailto:Commissioner.Walker@mctx.org)

With a copy to:

B.D. Griffin, County Attorney  
 501 N. Thompson, Suite 300  
 Conroe, Texas 77301  
 Email: [bd.griffin@mctx.org](mailto:bd.griffin@mctx.org)

##### **CITY OF MONTGOMERY:**

City of Montgomery, Texas  
 Attn: N Browe  
 101 Old Plantersville Rd.

Montgomery, Texas 77316  
 Email:

With a copy to:

Johnson Petrov LLP, City Attorney  
 Attn: Alan P. Petrov, Managing Partner  
 2929 Allen Parkway, Suite 3150  
 Houston, Texas 77019

Each Party shall have the right to change its respective address to any other address in the State of Texas by giving at least fifteen (15) days written notice of such change to the other Parties.

Other communications, except for Notices required under this Agreement, may be sent by electronic means or in the same manner as Notices described herein.

#### VI. Assignment

County and City bind themselves and their successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither County nor City shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld.

#### VII. Counterparts and Electronic Signature

Pursuant to the requirements of the Uniform Electronic Transactions Act in Chapter 322 of the Texas Business and Commerce Code and the Federal Electronic Signatures in Global and National Commerce Act (beginning at 15 U.S.C. Section 7001), the Parties have agreed that the transactions under this Agreement may be conducted by electronic means. Pursuant to these statutes, this Agreement may not be denied legal effect or enforceability solely because it is in electronic form or because it contains an electronic signature. This Agreement may be executed in duplicate counterparts and with electronic or facsimile signatures with the same effect as if the signatures were on the same document. Each multiple original of this document shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.

#### VIII. Independent Parties.

It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to constitute or create a joint venture, partnership, association or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. County is an independent contractor and neither it, nor its employees or agents shall be considered to be an employee, agent, partner, or representative of City for any purpose. City, nor its employees, officers, or agents shall be considered to be employees, agents, partners or representatives of County for any purposes. Neither Party has the authority to bind the other Party.



IX. No Third Party Beneficiaries.

County is not obligated or liable to any party other than City for the performance of this Agreement. Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies upon any third party. Further, nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to increase the rights of any third party, or the duties or responsibilities of County with respect to any third party.

X. Waiver of Breach.

A waiver by either Party of a breach or violation of any provision of the Agreement shall not be deemed or construed to be a waiver of any subsequent breach.

XI. No Personal Liability; No Waiver of Immunity.

- A. Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the County.
- B. The Parties agree that no provision of this Agreement extends the Parties' liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
- C. Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by County or City of any right, defense, or immunity on behalf of themselves, their employees or agents under the Texas Constitution or the laws of the State of Texas.

XII. Applicable Law and Venue.

This Agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Conroe, Montgomery County, Texas.

XIII. No Binding Arbitration; Right to Jury Trial.

Neither party agrees to binding arbitration, nor waives its right to a jury trial.

XIV. Contract Construction.

This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement. The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement. When terms are used in the singular or plural, the meaning shall apply to both. When either the male or female gender is used, the meaning shall apply to both.

XV. Recitals.

The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.

XVI. Entire Agreement; Modifications.

This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement supersedes and replaces any prior agreement between the Parties pertaining to the rights granted and the obligations assumed herein. This Agreement shall be subject to change or modification only by a subsequent written modification approved and signed by the governing bodies of each Party.

XVII. Severability.

The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person, entity, or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons, entities, or circumstances shall not be affected thereby.

XVIII. Survival of Terms.

Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.

XIX. Multiple Counterparts/Execution.


This Agreement may be executed in several counterparts. Each counterpart is deemed an original and all counterparts together constitute one and the same instrument. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.

EXECUTED BY THE PARTIES ON THE RESPECTIVE DATES SHOWN BELOW.


*[Signatures are contained on one or more separate execution pages]*

EXECUTED ON THE 26<sup>th</sup> DAY OF September, 2022.

**MONTGOMERY COUNTY, TEXAS**

By:   
Mark J. Keough, County Judge

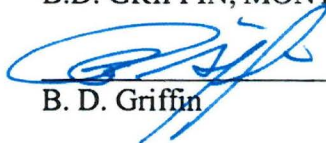
Attest:

  
Mark Turnbull, County Clerk



APPROVED AS TO FORM:

B.D. GRIFFIN, MONTGOMERY COUNTY ATTORNEY

  
B. D. Griffin

EXECUTED ON THE 14<sup>th</sup> DAY OF October, 2022.

**CITY OF MONTGOMERY TEXAS**


By:   
Byron Sanford, Mayor

Date: 10-14, 2022.

Attest:

  
Nici Browe, City Secretary

APPROVED AS TO FORM:

  
Alan P. Petrov, City Attorney



**INTERLOCAL COOPERATION AGREEMENT BETWEEN CITY OF MONTGOMERY, TEXAS AND MONTGOMERY COUNTY, TEXAS (Lone Star Parkway at Town Creek Bridge)**

This Interlocal Cooperation Agreement ("Agreement") is made and entered into by and between **City of Montgomery, Texas**, a body corporate and politic under the laws of the State of Texas, hereinafter called "City" and **Montgomery County**, a body corporate and politic under the laws of the State of Texas, hereinafter called "County" in accordance with the Interlocal Cooperation Act, Tex. Gov't Code Ch. 791.001 *et seq.* City and County may also be referred to individually herein as a "Party", or collectively as the "Parties".

**RECITALS:**

WHEREAS, it is of the mutual benefit of the Parties to improve mobility within the City in the unincorporated areas of the County outside of the City.

WHEREAS, the Parties desire to share the responsibilities and costs to make emergency repairs to the bridge on Lone Star Parkway at Town Creek (east of Plez Morgan Dr.), which bridge is currently within the municipal limits of the City but which has not been accepted into the City maintenance program ("Project").

WHEREAS, the Project is located in within the municipal limits of the City, and in Montgomery County.

NOW THEREFORE, the Parties desire to proceed with the design and construction of the Project in accordance with this Agreement.

**I. Responsibilities of the Parties**

- A. County Responsibilities. Upon execution of this Agreement by the Parties, County shall:
  - i) Provide engineering and related support services necessary to prepare plans, specifications, and estimates ("PS&E") for construction of the Project;
  - ii) Submit such PS&E to City for review and approval;
  - iii) Identify any utility and/or pipelines in conflict with construction of the Project;
  - iv) Coordinate and relocate any utilities and/or pipelines found to be in conflict with the construction of the Project;
  - v) Obtain all necessary approvals and/or permits from any jurisdictional agencies;
  - vi) Advertise for and receive bids for the construction of the Project in accordance with the PS&E in the manner similar to that of other like County projects.
  - vii) Upon receipt and tabulation of bids for the Project, County will determine the lowest responsible bidder for the construction of the Project. It is expressly agreed and understood that County reserves the right to reject all bids. If County, in its discretion, rejects all bids, then County may within thirty (30) days from the date of rejection of all bids either (a) re-advertise for bids pursuant to the same understanding with regard to rejection of bids, or (b) terminate this Agreement and return all funds, if any, received from City.

- ix) Upon approval of the PS&E by City, and receipt of funds from City pursuant to Section II below, County shall award the contract for construction of the Project to the lowest and best bidder in accordance with the usual and customary procedures of County. County's determination of the lowest and best bid for the Project shall be final and conclusive.
- x) Provide the County funding share being fifty percent (50%) of the total design and construction costs for the Project ("County Share"), subject to the provisions set forth in Section III below.
- xi) Provide and manage the day-to-day construction of the Project, including construction materials testing ("CMT"). During the construction of the Project, City shall have the right of access to the construction site and shall have the right to review all documents, maps, plats, records, photographs, reports or drawings affecting said construction, provided, however, City shall not interfere with the work in progress;
- xii) Upon substantial completion of the construction of the Project, and again at 100% completion, provide an opportunity for City representatives to participate in a walk through to develop a punch list; and
- xiii) Upon final acceptance of the Project by the Parties, provide a set of record drawings, which have been signed and sealed by the Project Engineer to City;

B. City Responsibilities. Upon execution of this Agreement by the Parties, City shall:

- i) Review the PS&E prepared by County for the Project and provide objections or approval to County within ten (10) days of receipt by City. City agrees that approval will not be unreasonably withheld, and County may proceed as if approved in the event City has not provided any objections or approval within the ten (10) days aforementioned; and
- ii) Provide the City funding share being fifty percent (50%) of the design and construction costs for the Project, not to exceed One Hundred Thousand and no/100 Dollars (\$100,000.00), (hereinafter defined as "City's Share"), subject to the provisions set forth in Section III below, in accordance with Section II below.

## II. Terms of Payment

Upon the acceptance of the bid or award by County, County will invoice City for the City's Share, and City shall remit payment of the City's Share to County on or before forty-five (45) days of City's receipt of such invoice. Within 30 days of the completion of the Project, County shall submit to the City for approval a final accounting of the project costs including the final City's Share and City shall remit payment of the City's Share to County on or before forty-five (45) days of City's receipt of such final accounting and invoice. The final City's Share for the Project shall be based on all project costs incurred to date for the Project

## III. Limitations of Appropriation

County and City acknowledge and agree that before County and City may pledge any amount of funds for any reason, funds must be appropriated and certified as available by each Party's respective county auditor from current fiscal funds.



#### IV. Term and Termination

This Agreement is effective as of the date it has been approved and executed by all Parties ("Effective Date") and shall remain in full force and effect until the completion of the Project or County's receipt of payment from City of all funds due and owing under the terms of this Agreement, whichever occurs later, unless earlier terminated in accordance with the terms of this Agreement.

City may terminate this Agreement at any time prior to the awarding of the contract for construction of the Project, or as otherwise allowed under this Agreement, by thirty (30) days' written notice to the County, and City shall have no further obligation hereunder.

County may terminate this Agreement at any time prior to the awarding of the contract for construction of the Project, or as otherwise allowed under this Agreement, by thirty (30) days' written notice to City. In the event of termination by County, County will have no further obligation pursuant to this Agreement, other than to return any unexpended funds paid to County by City. In addition, any interest earned on said funds paid to County by City pursuant to this Agreement will become the sole property of County.

#### V. Notice

All notices required under this Agreement ("Notice") shall be in writing and shall be duly served when it shall have been personally delivered to the address below, or deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the Parties at the following addresses:

##### **MONTGOMERY COUNTY:**

Montgomery County, Texas  
 Attn: Commissioner Robert Walker  
 510 Hwy 75 North  
 Willis, Texas 77378  
 Email: [Commissioner.Walker@mctx.org](mailto:Commissioner.Walker@mctx.org)

With a copy to:

B.D. Griffin, County Attorney  
 501 N. Thompson, Suite 300  
 Conroe, Texas 77301  
 Email: [bd.griffin@mctx.org](mailto:bd.griffin@mctx.org)

##### **CITY OF MONTGOMERY:**

City of Montgomery, Texas  
 Attn: City Secretary N. Browe  
 101 Old Plantersville Rd.

Montgomery, Texas 77316

Email:

With a copy to:

Johnson Petrov LLP, City Attorney  
 Attn: Alan P. Petrov, Managing Partner  
 2929 Allen Parkway, Suite 3150  
 Houston, Texas 77019

Each Party shall have the right to change its respective address to any other address in the State of Texas by giving at least fifteen (15) days written notice of such change to the other Parties.

Other communications, except for Notices required under this Agreement, may be sent by electronic means or in the same manner as Notices described herein.

#### VI. Assignment

County and City bind themselves and their successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither County nor City shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld.

#### VII. Counterparts and Electronic Signature

Pursuant to the requirements of the Uniform Electronic Transactions Act in Chapter 322 of the Texas Business and Commerce Code and the Federal Electronic Signatures in Global and National Commerce Act (beginning at 15 U.S.C. Section 7001), the Parties have agreed that the transactions under this Agreement may be conducted by electronic means. Pursuant to these statutes, this Agreement may not be denied legal effect or enforceability solely because it is in electronic form or because it contains an electronic signature. This Agreement may be executed in duplicate counterparts and with electronic or facsimile signatures with the same effect as if the signatures were on the same document. Each multiple original of this document shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.

#### VIII. Independent Parties.

It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to constitute or create a joint venture, partnership, association or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. County is an independent contractor and neither it, nor its employees or agents shall be considered to be an employee, agent, partner, or representative of City for any purpose. City, nor its employees, officers, or agents shall be considered to be employees, agents, partners or representatives of County for any purposes. Neither Party has the authority to bind the other Party.



IX. No Third Party Beneficiaries.

County is not obligated or liable to any party other than City for the performance of this Agreement. Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies upon any third party. Further, nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to increase the rights of any third party, or the duties or responsibilities of County with respect to any third party.

X. Waiver of Breach.

A waiver by either Party of a breach or violation of any provision of the Agreement shall not be deemed or construed to be a waiver of any subsequent breach.

XI. No Personal Liability; No Waiver of Immunity.

- A. Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the County.
- B. The Parties agree that no provision of this Agreement extends the Parties' liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
- C. Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by County or City of any right, defense, or immunity on behalf of themselves, their employees or agents under the Texas Constitution or the laws of the State of Texas.

XII. Applicable Law and Venue.

This Agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Conroe, Montgomery County, Texas.

XIII. No Binding Arbitration; Right to Jury Trial.

Neither party agrees to binding arbitration, nor waives its right to a jury trial.

XIV. Contract Construction.

This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement. The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement. When terms are used in the singular or plural, the meaning shall apply to both. When either the male or female gender is used, the meaning shall apply to both.



#### XV. Recitals.

The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.

#### XVI. Entire Agreement; Modifications.

This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement supersedes and replaces any prior agreement between the Parties pertaining to the rights granted and the obligations assumed herein. This Agreement shall be subject to change or modification only by a subsequent written modification approved and signed by the governing bodies of each Party.

#### XVII. Severability.

The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person, entity, or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons, entities, or circumstances shall not be affected thereby.

#### XVIII. Survival of Terms.

Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.

#### XIX. Multiple Counterparts/Execution.


This Agreement may be executed in several counterparts. Each counterpart is deemed an original and all counterparts together constitute one and the same instrument. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.

EXECUTED BY THE PARTIES ON THE RESPECTIVE DATES SHOWN BELOW.

*[Signatures are contained on one or more separate execution pages]*

EXECUTED ON THE 26<sup>th</sup> DAY OF September, 2022.

**MONTGOMERY COUNTY, TEXAS**

By:   
Mark J. Keough, County Judge

Attest:

  
Mark Turnbull, County Clerk



APPROVED AS TO FORM:

B.D. GRIFFIN, MONTGOMERY COUNTY ATTORNEY

  
B. D. Griffin

EXECUTED ON THE 14<sup>th</sup> DAY OF October, 2022.

**CITY OF MONTGOMERY TEXAS**

By:   
Byron Sanford, Mayor

Date: 10-14, 2022.

Attest:

  
Nici Browe, City Secretary

APPROVED AS TO FORM:

  
Alan P. Petrov, City Attorney

BYLAWS  
OF  
MONTGOMERY ECONOMIC DEVELOPMENT CORPORATION

These Bylaws govern the affairs of MONTGOMERY ECONOMIC DEVELOPMENT CORPORATION (the "Corporation"), a nonprofit corporation organized under Article 5190.6 V.T.C.S., the Development Corporation Act of 1979 (the "Act") and governed by Sec. 4B of the Act.

ARTICLE I

PURPOSES

General Purposes

1.01 The Corporation acts on behalf of the City of Montgomery, Texas in furtherance of the public purposes of the Act and may engage in any project authorized under Sec. 2(10) or Sec. 4B of the Act.

Powers

1.02 The Corporation has all the powers, both express and implied, granted to corporations governed by Sec. 4B of the Act.

ARTICLE II

OFFICES

Principal Office

2.01 The principal office of the corporation in the State of Texas is located at 101 Old Plantersville Road, Montgomery, Texas. The Board of Directors may provide for additional offices or change the location of any office.

Registered Office and Agent

2.02 The Corporation shall comply with the requirements of the Act and maintain a registered office and registered agent in Texas. The registered office may, but need not, be identical with the Corporation's principal office in Texas. The Board of Directors may change the registered office and the registered agent as provided in the Act.

ARTICLE III

BOARD OF DIRECTORS

## Management of the Corporation

3.1 The affairs of the Corporation shall be managed by the Board of Directors.

### Number, Qualifications and Tenure of Directors

3.2 The Board of Directors shall consist of seven members appointed by the City Council of the City of Montgomery, Texas, for staggered two year terms of office. At least three (3) directors shall be persons who are not employees, officers or members of the governing body of the City of Montgomery, Texas. Two (2) directors shall be members of the governing body of the City. The terms of four (4) directors shall begin on January 1 of each odd numbered year and expire on December 31 of the next following odd numbered year. The terms of three (3) directors shall begin on January 1 of each even numbered year and expire on December 31 of the next following even numbered year. All directors of the Corporation shall be residents of the County of Montgomery with the majority being residents of the City of Montgomery.

### Vacancies

3.3 A vacancy occurring upon the Board of Directors shall be filled for the unexpired term, as appointed by the City Council.

### Annual Meeting

3.4 The annual meeting of the Board of Directors shall be held during January of each fiscal year. The Board of Directors shall designate the time and location of the annual meeting which shall be held in the principal offices of the corporation.

### Regular Meetings

3.5 The Board of Directors may provide for regular meetings by resolution stating the time and place of such meetings. The meeting shall be held within the City of Montgomery, Texas, at the principal offices of the corporation or at such other location as the Board of Director may designate.

### Special Meetings

3.6 Special meetings of the Board of Director may be called at 'the request of the president or any two directors. A person or persons calling the meeting shall fix the time and location of the meeting, which meeting shall be conducted within the City of Montgomery, Texas. The person or persons calling a special meeting shall notify the secretary of the Corporation of the information required' to be included in the notice of the meeting. In addition to the posting of a meeting notice in accordance with these Bylaws, a copy of each such meeting notice shall be delivered to each director not less than seventy two hours before the time of the meeting. A meeting notice shall be deemed delivered to any director when deposited in the United States mail addressed to the director at his or her address as it appears on the records of

the Corporation. Such additional notice may be waived in writing by a director at any time either before or after the time of the meeting and such additional notice shall be deemed waived the attendance.

#### Notice of Meetings

3.7 The Board of Director shall be considered a "governmental body" within the meaning of Texas Government Code, Sec. 551.001, a notice of each meeting shall be given in accordance with the provisions of Texas Government Code, Chapter 551 (the Texas Open Meetings Act).

#### Quorum

3.8 Four (4) directors shall constitute a quorum for the transaction of business at any meeting of the Board of Director. The presence of a director may not be established by proxy. No business shall be conducted, nor shall any action be taken by the Board of Directors in the absence of a quorum.

#### Duties of Directors

3.9 Director shall exercise ordinary business judgment in managing the affairs of the Corporation. In acting in their official capacity as directors of the Corporation, director shall act in good faith and take actions they reasonably believe to be in the best interest of the Corporation and which are not unlawful and shall refrain from actions not in the best interest of the Corporation or which would be unlawful. A director shall not be liable if, in the exercise of ordinary care, the director acts in good faith relying of written financial and legal statements provided by an accountant or attorney retained by the Corporation.

#### Actions of Board of Directors

3.10 The Board of Directors shall try to act by consensus. However, the vote of a majority of directors present at a meeting at which a quorum is present shall be sufficient to constitute the act of the Board of Directors.

#### Proxy Voting Prohibited

3.11 A director may not vote by proxy.

#### Removal of Directors

3.12 The Board of Directors and each member thereof serves at the pleasure of the City Council of the City of Montgomery, Texas, which may remove any director at any time, either with or without good cause.

## Committees of Directors

3.13 The Board of Directors may by resolution establish one or more special or standing committees of its members. Such committees shall have the powers, duties and responsibilities established by the Board. The committees shall keep regular minutes of their meetings and report the same to the Board of Directors when required.

## ARTICLE IV

### OFFICERS

#### Officer Positions

4.1 The officers of the Corporation shall be a president, a vice president, a secretary, and a treasurer. The Board of Directors may create additional officers positions, define the authorities and duties of such additional positions and appoint persons to fill such positions. No person may hold more than one such office.

#### Elections and Terms of Officers

4.2 The officers of the Corporation shall be elected annually by the Board of Directors at the regular annual meeting.

#### Removal of Officers

4.3 Any officer may be removed by the Board of Directors at any time, with or without good cause. The removal of an officer does not also result in the removal of such person as a director of the Corporation.

#### Vacancies

4.4 A vacancy in any office may be filled by the Board of Directors for the unexpired portion of the officer's term.

#### President

4.5 The president shall be the chief executive officer of the Corporation. The president shall supervise and control all of the business and affairs of the Corporation. The president shall preside at all meetings of Board of Directors. When the execution of any contract or instrument shall have been authorized by the Board of Directors, the president shall execute same except where such power is expressly delegated to another officer of the Corporation. The president shall perform other duties prescribed by the Board of Directors and all duties incident to the office of president.

### Vice president

4.6 When the president is absent, is unable to act, or refuses to act, the vice president shall perform the duties of the president. When acting in place of the president, the vice president shall have all the powers and duties as the president and be subject to all of the limitations and restrictions placed upon the president.

### Secretary

4.7 The Secretary shall:

- a) Give all notices as provided in the bylaws or as required by law.
- b) Take minutes of the meeting of the board of Directors and keep the minutes as part of the corporate records.
- c) Maintain custody of the corporate records, authenticate corporate documents and affix the seal of the Corporation as required.
- d) Keep a register of the mailing address of each director and officer of the Corporation.
- e) Perform duties as assigned by the president or Board of Directors.
- f) Perform all duties incident to the office of secretary.

The Board of Directors may, at their discretion, assign to a member of the City of Montgomery staff the duties of assistant to the Secretary.

### Treasurer

4.8 The Treasurer shall:

- a) Have charge and custody of and be responsible for all funds and securities of the Corporation.
- b) Receive and give receipts for moneys due and payable to the Corporation from any source.
- c) Deposit all moneys in the name of the Corporation in banks, trust companies, or other depositories as provided by these bylaws.
- d) Write checks and disburse funds to discharge obligations of the Corporation.
- e) Maintain the financial books and records of the corporation.
- f) Prepare financial reports at least annually.
- g) Perform other duties as assigned by the Board of Directors.
- h) Perform all duties incident to the office of treasurer.

The Board of Directors may, at their discretion, assign to a member of the City of Montgomery staff the duties of assistant to the Treasurer.

## ARTICLE V

### TRANSACTIONS OF THE CORPORATION

## Contracts

5.1 The Board of Directors may authorize any officer or agents of the Corporation to enter into a contract or execute and deliver any instrument in the name of or on behalf of the Corporation. This authority may be limited to a specific contract or instrument or it may extend to any number and type of possible contracts and instruments.

### Depository

5.2 The Board of Directors of the corporation shall designate a depository bank. All funds of the Corporation shall be deposited with the depository bank.

### Potential Conflicts of Interest

5.3 The members of the Board of Directors are local public officials within the meaning of Texas Government Code Chapter 171. If a director has a substantial interest in a business entity or real property which is the subject of deliberation by the Board of Directors, the director shall file an affidavit with the secretary of the corporation stating the nature and extent of the interest. Such affidavit shall be filed prior to any vote or decision upon the matter by the Board of Directors, and the interested director shall abstain from any vote or decision upon the matter.

## ARTICLE VI

### BOOKS AND RECORDS

#### Required Books and Records

6.1 The Corporation shall keep correct and complete books and records of account. The Corporation's books and records shall include:

- a) A file endorsed copy of all documents filed with the Texas Secretary of State relating to the Corporation, including, but not limited to, the articles of incorporation, any articles of amendment, restated articles, articles of merger, articles of consolidation, and statement of change of registered office or agent.
- b) A copy of the bylaws, and any amended versions or amendments to the bylaws.
- c) Minutes of the proceedings of the Board of Directors.
- d) A list of names and addresses of the directors and officers of the Corporation.
- e) A financial statement showing the assets, liabilities, and net worth of the Corporation at the end of the three most recent fiscal years.
- f) A financial statement showing the income and expenses of the Corporation for the three most recent fiscal years.
- g) All rulings, letters, and other documents relating to the Corporation's federal, state and local tax status.
- h) The Corporation's federal, state and local information or income tax returns for each of the Corporation's three most recent tax years.

#### Records Open to Public

6.2 The Corporation shall be considered a "governmental body" within the meaning of Texas Government Code, Sec. 552.003 and all records of the corporation shall be made available to the public for inspection or reproduction in accordance with the requirements of Texas Government Code, Chapter 552 (The Texas Open Records Act.)



## Audits

6.3 The City Council of the City of Montgomery, Texas may at any time require an independent audit of the Corporation's books to be conducted.

## ARTICLE VII

### FISCAL YEAR

The fiscal year of the corporation shall begin on the first day of October and end on the last day of September.

## ARTICLE VIII AMENDMENTS TO BYLAWS

The bylaws may be altered, amended or repealed by the Board of Directors with the consent of the City Council of the City of Montgomery, Texas.

## ARTICLE IX

### MISCELLANEOUS PROVISIONS

#### Legal Authorities Governing Construction of Bylaws

9.1 The Bylaws shall be construed in accordance with the laws of the State of Texas. All references in the bylaws to statutes, regulations, or other sources of legal authority shall refer to the authorities cited, or their successors, as they may be amended from time to time. It is expressly provided that the provision of the Development Corporation Act of 1979 applicable to corporations governed under Sec. 4B of that Act are incorporated within these bylaws by reference. In the event of any conflict between the applicable provisions of such Act and these bylaws, then the applicable provisions of such Act shall control.

#### Legal Construction

9.2 If any bylaw provision is held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision and the bylaws shall be construed as if the invalid, illegal or unenforceable provision had not been included in the bylaws.

#### Headings

9.3 The headings used in the bylaws are used for convenience and shall not be considered in construing the terms of the bylaws.

Seal

9.04 The Board of Directors may provide for a corporate seal. Such seal would consist of two concentric circles containing the words "Montgomery Economic Development Corporation" and "Texas" in one circle and the "Incorporated" together with the date of incorporation of the Corporation in the other circle.

Parties Bound

9.05 The bylaws shall be binding upon and incur to the benefit of the directors, officers and agents of the Corporation and their respective heirs, executors, administrators, legal representatives, successors and assigns except as otherwise provided in the bylaws.

Effective Date

9.06 These bylaws, and any subsequent amendments hereto, shall be effective of and from the date upon which approval has been given both by the Board of Directors and the City Council of the City of Montgomery, Texas.

CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting secretary of the MONTGOMERY ECONOMIC DEVELOPMENT CORPORATION , and the foregoing Bylaws constitute the Bylaws of the Corporation. These Bylaws were duly amended and adopted at a meeting of the Board of Directors held on the 18 day of February , 2019.

Signed this \_\_\_ day of \_\_\_\_\_, 2019 .

\_\_\_\_\_  
Secretary of the Corporation