

City of Windcrest



**AMENDED AGENDA
CITY COUNCIL MEETING
JANUARY 4, 2021**

CITY COUNCIL CHAMBERS @ 8601 MIDCROWN

CCM @ 6 P.M.

NOTICE IS HEREBY GIVEN THAT A CITY OF WINDCREST CITY COUNCIL MEETING WILL BE HELD AT WINDCREST CITY HALL LOCATED AT 8601 MIDCROWN, WINDCREST, TEXAS ON THE 4th DAY OF JANUARY 2021, STARTING AT 6:00 P.M.

DUE TO THE GOVERNOR'S SUSPENSION OF CERTAIN PROVISIONS OF THE TEXAS OPEN MEETINGS ACT TO HELP SLOW THE SPREAD OF COVID-19, NOTICE IS HEREBY GIVEN THAT ONE OR MORE OF THE CITY COUNCILMEMBERS MAY BE IN ATTENDANCE VIA WEBEX AND WILL ATTEND FROM A LOCATION OTHER THAN 8601 MIDCROWN.

THE CITY COUNCIL RESERVES THE OPTION TO RECESS THE MEETING DURING THE EVENING OF JANUARY 4, 2021, AND TO RECONVENE THE MEETING ON THE FOLLOWING DAY, JANUARY 5, 2021, AT 9:00 A.M. AT THE WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS.

NOTICE OF ASSISTANCE AT THE PUBLIC MEETING

The City of Windcrest Council Chambers are wheelchair accessible, and accessible parking spaces are available. In compliance with Americans with Disabilities Act, the City of Windcrest will provide reasonable accommodations for persons attending the meeting. To better serve you, requests should be received 48 hours prior to the meeting. Please contact the City Secretary's Office, at 210-655-0022 ext. 2150 or Fax 210-655-8776, or 711 Texas Relay.

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. PLEDGE OF ALLEGIANCE AND INVOCATION**
- IV. CITIZENS TO BE HEARD/CITIZEN PARTICIPATION**
 - a) Citizens may address the City Council on topics not on the agenda for no more than three (3) minutes.
 - b) Citizens shall also have the opportunity to address the City Council during consideration of posted agenda items for no more than six (6) minutes.
 - c) Only a maximum of six (6) members of the public will be permitted in the City Council Chambers at a time. All attendees will be required to be screened for present signs of COVID-19 prior to entering City Hall.
 - d) Four (4) hours prior to the meeting, an email to the city secretary at citysecretary@windcrest-tx.gov is required, to be added to the attendee list ensuring proper physical distance seating inside

and outside City Council Chambers.

- e) An email statement may be sent to the City Secretary @ citysecretary@windcrest-tx.gov to be read into the meeting to City Council. Statements will be provided to Council and available to the public not in attendance after the meeting.
- f) A City Official may make a statement of specific factual information in response to an inquiry made by a member of the public, or a recitation of existing policy in response to an inquiry made by a member of the public.

THE FOLLOWING ITEMS MAY BE CONSIDERED AT ANY TIME DURING THE REGULAR COUNCIL MEETING:

V. CONSENT AGENDA

- a) City Council will review, discuss, and may take action on Ordinance 2021-001(O), an ordinance amending the business registration requirements in the City's Code to account for market changes in the way businesses are operating by amending Chapter 18 the Business Registration Process, Article II, Sections 18-19, 18-20, 18-22 through 18-24 and creating sections 18-25 through 18-30 and creating Article I, Section 18-1, a business permitting process. [Rafael Castillo, Jr., City Manager] **2nd Reading**
- b) City Council will review, discuss, and may take action on Ordinance 2021-002(O), an ordinance allowing for a temporary mobile food vendor operation, registration and permit by amending Chapter 14, Article II, Division 1 Generally and Division 2 Permits. [Rafael Castillo, Jr., City Manager] **2nd Reading**

VI. RESOLUTION

- a) City Council will review, discuss and take action on rescheduling the January 25, 2021 City Council meeting to Tuesday, January 19, 2021. [Rafael Castillo, City Manager]

VII. CITY MANAGER'S REPORT

VIII. EXECUTIVE SESSION

At any time during the meeting, the City Council may recess into executive session in the City Hall Conference Room to deliberate or discuss any of the following items:

- a) Pursuant to Texas Government Code Sec. 551.071(1) and (2) (consultation with attorney) regarding an Update on pending litigation concerning Cause No. 2020CI23833, Frank Archuleta vs. Dan Reese et.al.

IX. GENERAL ANNOUNCEMENTS & FUTURE AGENDA ITEMS REQUESTED

Per Ordinance No. 618, repealing Ordinance No. 593; Section 9: Every agenda shall include an item entry granting a member the opportunity to propose an item for consideration of future agendas for Regular or Special Meetings. Any member may request the inclusion of such items at any meeting.

X. ADJOURNMENT

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the City Council of the City of Windcrest is a true and correct copy of said Notice and was posted on the bulletin board at City Hall of said City in a convenient place to the public and said Notice was posted more than seventy-two (72) hours prior to the meeting on January 4, 2021.

BY: 

Dusty DeHoyos, Assistant City Secretary

AGENDA NOTICES:**DECORUM REQUIRED:**

Any disruptive behavior, including shouting or derogatory statements or comments may be ruled out of order by the Presiding Officer. Continuation of this type of behavior could result in a request by the Presiding Officer that the individual leave the meeting, and if refused, an order of removal.

ACTION BY COUNCIL AUTHORIZED:

The City Council may vote and/or act upon any item within this Agenda. The Council reserves the right to retire into executive session concerning any of the items listed on this Agenda, pursuant to and in accordance with Texas Government Code § 551.072 (Deliberations about Real Property); § 551.073 (Deliberations about Gifts & Donations); § 551.076 (Deliberations about Security Devices); § 551.087 (Economic Development); and, § 551.071 to seek the advice of its attorney about pending or contemplated litigation, settlement offer or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflict with the Open Meetings Act and may invoke this right where the City Attorney, the Mayor or a majority of the Governing Body deems an executive session is necessary to allow privileged consultation between the City Attorney and the governing body, if considered necessary and legally justified under the Open Meetings Act. The attorney may appear in person, or appear in executive session by conference call in accordance with applicable state law.

EXECUTIVE SESSIONS APPROVED BY CITY ATTORNEY:

This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

ATTENDANCE BY OTHER ELECTED OR APPOINTED OFFICIALS:

It is anticipated that members of the City Council, or other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

ORDINANCE NO. 2021-001(O)

AN ORDINANCE AMENDING THE BUSINESS PERMITTING PROCESS BY AMENDING CHAPTER 18 THE BUSINESS REGISTRATION PROCESS, AND CREATING ARTICLE I, SECTION 18-1 A BUSINESS PERMITTING PROCESS.

WHEREAS, the City of Windcrest City Council finds that the mobile vending businesses have increased and has become a more accessible type of way to do business; and

WHEREAS, the City of Windcrest City Council finds that the City's code regulating business registration requirements has not been updated since the year 2001; and

WHEREAS, the City of Windcrest City Council finds that, while the City of Windcrest Code of Ordinances does have provisions for issuing permits to certain classes of businesses, the current structure of the City's Code of Ordinances does not contain centralized language for businesses registration which address the current commercial environment or administrative processes to more effectively and efficiently deal with violations; and

WHEREAS, the City of Windcrest City Council finds that, in order to create a consistent and reliable regulatory system for businesses and patrons, an updated business registration and permit process is needed; and

WHEREAS, the Windcrest City Council finds this ordinance is in the interest of the public and the City and in furtherance of good governance.

I.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Chapter 18, Article II, Sections 18-19, 18-20, 18-22 through 18-30 and Chapter 18, Article I, Section 18-1, is adopted or amended as indicated with cross- through text being deletions and underlined text being additions or adoptions and shall read as follows:

CHAPTER 18 – LICENSES, PERMITS, AND BUSINESS REGULATIONS

ARTICLE I. - IN GENERAL

Sec. 18-1. - Definitions

The following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where clearly indicated otherwise:

“Business” means a person, partnership, association, sole proprietorship, corporation, or other entity which conducts an activity for the purpose of a direct or indirect, gain, benefit, or advantage, including pursuing for profit a business, profession, trade, or occupation, including home occupations as defined in the City Zoning Code. The term includes institutionalized uses or activities, whether performed for profit or which are non-profit or volunteer organizations. This term expressly does not include any state or federal entity, youth non-profit organizations¹, minors operating a business from their respective residential neighborhood, religious establishments such as churches, and hobby businesses as defined under Section 113 of the City Zoning Code. The term, for purposes of this article only, also does not include a sole proprietor whose only business activity which is performed within the City’s limits is that the sole proprietor’s residential address within the City is used to register the business with the Texas Secretary of State’s office.

“Business registration” is an acknowledgment of the notice of an intend to conduct business within the limits of the City of Windcrest. Only one business registration is required per business irrespective of the number of physical locations or mobile establishments. A proper business registration requires payment of any listed registration fee and a complete registration application before it can be acknowledged. Such registration may not be acknowledged unless the business is the type authorized by the City’s Code of Ordinances.

“Mobile establishment” means a business which has the capacity to be transported from place to place via horse-drawn, motor-operated, or hand-pushed conveyance and in which goods or services are provided directly from the conveying horse-drawn, motor-operated, or hand-pushed vehicle. This term does not include motor vehicles which merely transport employees of the business to and from work sites.

“Permit” is an authorization for a particular static location or mobile establishment, to conduct business within the limits of the City of Windcrest. Each static location or vehicle being used as a mobile establishment must obtain a separate permit. Unless otherwise authorized by this chapter, no permit may be issued to a business which does not have an active registration with the City. Any permit issued without an active registration is void.

“Proprietor” shall have its ordinary meaning but shall also include any person operating or owning a business or any entity which operates or owns a business within the city.

Secs. 18-2—18-18. - Reserved.

¹ The City does not intend to require such organizations including, but not limited to, the Boy Scouts of America or the Girl Scouts of the United States of America to register or obtain permits in order to conduct youth activities or fundraisers.

ARTICLE II. - BUSINESS REGULATIONS

Sec. 18-19. - Business registration required.

- (1) ~~It shall be the duty of every person, co-partnership, association or corporation maintaining an establishment within the limits of the city, for the purpose of pursuing for profit any business, profession, trade or occupation, to register with the city secretary~~ The proprietor of a business operating within the limits of the city shall register such business with the city's permitting office. Such business registration shall be valid for a period of one year from the date thereof and shall not be assignable except by permission of the city manager. Each such registration shall be posted by the registrant in a conspicuous place at the location of business.
- (2) Any business registration shall be issued under the corporate seal of the City, signed by a designated city official or the City Manager.

Sec. 18-20. - When due.

Such business registration shall become due prior to the day upon which such ~~person, co-partnership, association or corporation~~ business first engages in any business within the city and thereafter shall be due annually in advance not later than 4:00 p.m. of the last business day prior to which any business registration expires.

~~Sec. 18-22. - Revocation for violations.~~

~~Any business registration granted or issued by the city shall be subject to revocation by the city council, after due notice to the holder and hearing thereon, upon proof of violation of any of the ordinances of the city, or the operation of such business, profession, trade or occupation in violation of the following section hereof.~~

~~(Code 1986, § 15.104; Ord. No. 96, 9-13-1971)~~

Sec. 18-23. - ~~Nuisance prohibited~~ Prohibited conduct.

It shall be unlawful for any ~~registrant doing~~ proprietor of a business operating in the city under and by virtue of any business registration issued by the city to violate any law of the State of Texas relating to the safe and healthy operation of a business or any provision of the City's code or to pursue, operate or conduct such business in such manner or under such circumstances as to cause material distress, annoyance, discomfort and injury to any person of normal nervous sensibility in the ~~neighborhood~~ vicinity thereof, and any such action is hereby declared to be a nuisance and is prohibited.

Sec. 18-24. - Penalty.

Any person, firm or corporation who shall violate The business as well as the proprietor of any business who violates any provision of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in accordance with section 1-5. The business as well as the proprietor of any business may also be subject to administrative or civil penalties as authorized by law for violating any provision of this article.

Sec. 18-25. - Permits, generally.

- (1) All businesses operating within the city shall obtain a permit for each location it operates such business within the city and shall obtain a permit for each mobile vehicle used to operate a mobile establishment.
- (2) All permits issued are for a specific location or mobile establishment. No permits are transferrable.
- (3) All permits are valid for a period of one year from the date of issuance by the city.
- (4) Unless otherwise indicated by another chapter or article in the City's Code of Ordinances, the process for obtaining a permit to operate within the city's limits is governed by this article.

Sec. 18-26. - Permit required

- (1) Each static location conducting business is required to be issued its own permit.
- (2) Each mobile establishment is required to be issued its own permit.
- (3) It shall be the duty of the proprietor of every business operating within the limits of the city to apply for and obtain a permit for such with the city's permit office. Said permit shall be valid for the term of the business' registration and shall not be assignable except by permission of the city manager. Each static location or mobile establishment shall post its respective permit in a conspicuous place which can be viewed by code and law enforcement personnel of the city.
- (4) Any permit shall be issued under the corporate seal of the City, signed by the designated officer or the city manager and shall authorize the proprietor therein named to establish, maintain, and operate the identified static location or mobile establishment.

Sec. 18-27. - When due.

Such permit, for every static location and mobile establishment, shall become due prior to the day upon which such business first engages in such business within the city's jurisdiction. Thereafter, each permit shall be due in advance not later than 4:00 p.m. of the last business day prior to which any permit expires.

Sec. 18-28. - Requirements

- (1) Application for a permit shall include the following:
 - a. A copy of the pending or approved business registration for the business to which both the business registration and permit will be applied;

- b. A copy of the business' sales tax permit as required under Chapter 151.201 of the Texas Tax Code (if not attached with the pending or approved business registration);
 - c. The address of the static location OR unique identifying information for the mobile establishment for which the permit is sought;
- (2) The City Manager's designee shall have ten (10) business days to review and decide whether to approve or deny the permit.
 - (3) If the permit is denied, the City Manager's designee shall provide to the proprietor of the business the reason(s) for the denial.

Sec. 18-29. - Revocation of Permits

- (1) Any permit granted or issued by the city shall be subject to revocation by the City Manager's designee upon proof of violation of any of the ordinances of the city, violation of any law of the State of Texas, or the operation of such business in violation of this Article.
- (2) Upon issuance of a permit revocation, the particular static location or mobile establishment shall follow the procedure listed herein or be subject to ceasing operation at that location as well as the possibility of civil penalties.
- (3) Procedure.
 - a. Notice. Should the City Manager's designee have cause to believe that a revocation of a permit or registration is authorized and is applicable, the City Manager's designee shall cause written notice to be sent to the proprietor of such business prior to revocation. Such notice shall include, but is not limited to:
 - i. The proprietor's name, address, name of business, if known, and, if applicable, the address(es) of the subject static location(s) and/or the unique identifying information of the mobile establishment(s), if known;
 - ii. A factual description of the grounds for proposed revocation, including the date(s) of any violations made the basis of the proposed revocation;
 - iii. Identification of the section(s) of the City Code of Ordinances or laws of the State of Texas made the basis of the proposed revocation;
 - iv. Copies of any documents the City Manager's designee believes demonstrate a violation occurred which is made the basis of the proposed revocation;
 - v. The proprietor's ability to submit a written response regarding the alleged grounds for the proposed revocation;
 - vi. A specific date and time by which the proprietor may submit a written response (including the address for submission); and
 - vii. Information regarding the potential consequences and penalties for failing to timely submit such written response.
 - b. Presumptions.

Each proprietor is presumed to have been properly mailed or emailed notice if the notice is mailed by U.S. mail to the address on file with the City contained in either the business's registration or on file with the Secretary of State's office as a registered agent or the notice is emailed to the email address on file with the City included in the business's registration.

c. Proprietor's Written Response

i. The City must consider any completed written response submitted by the proprietor. For a written response to be considered complete, the response must, at a minimum, contain:

- a) The proprietor's name, address, name of business, and, if applicable, the address(es) of the subject static location(s) and/or the unique identifying information of the mobile establishment(s);
- b) A current phone number and email address at which the proprietor can reliably receive messages or notices regarding the administrative matter or an explanation as to why no email address is available;
- c) A description of why the proprietor believes the grounds listed for the proposed revocation did not occur OR the reason(s) the grounds listed for the proposed revocation justifiably occurred OR what, if anything, the proprietor will be doing to prevent future occurrences of the alleged violation;
- d) A description, if applicable, of how the proprietor has corrected the violation(s); AND
- e) Copies of any documentation the proprietor believes the City should have regarding the grounds listed for the proposed revocation which would assist the City in making a determination.

ii. The proprietor must submit a written response to the city secretary's office within ten (10) business days of having been mailed or emailed the notice.

d. Deadline.

i. After the deadline has passed for the proprietor to have submitted a written response to any notice of proposed revocation, the City Manager's designee must make a written determination of whether the grounds listed for proposed revocation occurred and whether the business registration or permit will be revoked.

ii. Such written determination is considered an administrative order.

- iii. If the written determination revokes the permit or registration, the determination shall inform the proprietor that continued operation of the location could result in a judicial order assessing civil penalties of \$1,000 for each day after the date of the written determination that the location continues operating. Such determination must also state the date on which the permit or registration is revoked.
- iv. Such a determination must be in writing and mailed, emailed, or personally provided to the proprietor. Such determination may be mailed or emailed to any address provided notice or any mail or email address provided in the proprietor's written response.
- v. If the business operates or otherwise violates the administrative order, the City Manager's designee may issue further administrative orders, imposing civil penalties of no more than \$1,000 a day for each violation of the administrative order.
- vi. If the City Manager's designee fails to make a written determination and have personally provided it to the proprietor, placed it in the U.S. mail, or emailed it by 11:59 p.m. on the deadline date, the violation shall be considered dismissed with no determination made.
- e. Administrative Appeal.
 - i. If a proprietor wishes to appeal a permit or registration revocation or the imposition of a civil penalty, the proprietor may file an appeal with the City Manager's Office within ten (10) business days of the date the administrative order being appealed was mailed or emailed to the proprietor.
 - ii. Such appeal must be in writing, labeled as "Notice of Appeal of Administrative Order" or a comparable title, and must set forth the grounds upon which the appellant seeks the appeal.
 - iii. The City Manager's Office has ten (10) business days to review the appeal and make a decision. If the City Manager's Office does not make a decision and mail or email the written decision to the appellant by the deadline, the administrative order shall be considered reversed.
 - iv. During the review, the City Manager's Office shall analyze whether any proof of actions which support revocation or a penalty exist as outlined in this article. If the City Manager's Office finds revocation or a penalty was warranted, the City Manager's Office shall respond in writing that the

revocation or penalty shall remain in effect. Such decision also constitutes an administrative order.

- v. The City Manager's Office may modify or reverse the revocation or penalty if the City Manager's Office believes good grounds exists for the reversal or modification. Any modification or reversal must be in writing and provided to the appellant. Such decision also constitutes an administrative order.

f. Appeal Hearings in Municipal Court.

- i. The proprietor may appeal the decision of the City Manager's Office by filing an appeal with the City of Windcrest Municipal Court. Such filing must be done within ten (10) business days of the City Manager's appeal decision being mailed or emailed to the proprietor.
- ii. The municipal court must review the administrative order under a substantial evidence legal standard. If the administrative order is affirmed, the court may assess civil penalties not to exceed \$1,000 for each day for any violations of the administrative order. If the administrative order is reversed, the order must expressly state the order is reversed. The municipal court may also modify the administrative order under its judicial discretion.

Sec. 18-30. - Civil Enforcement

- (1) If a proprietor or business violates an administrative order and has not timely appealed the order, the city may enforce the administrative order under any means authorized by law.
- (2) Such enforcement of an administrative order includes, but is not limited to, the City Manager authorizing the City Attorney to file a suit with the City of Windcrest Municipal Court for the enforcement of the administrative order under the City's Code of Ordinances. The City may seek to enforce the requirements and prohibitions of this article as well as all legally authorized relief and damages allowed by law, including civil penalties, costs of court and attorney's fees.
- (3) If a business permits, or causes to permit, a location or mobile establishment to begin or continue to operate before it has been granted or issued a registration or a permit or a registration or permit has expired, the City Manager need not initiate the administrative process, but is authorized to file a claim or lawsuit with the City of Windcrest Municipal Court to seek enforcement of the City's ordinances. The City may seek to enforce the requirements and prohibitions of this article as well as all legally authorized relief and damages allowed by law, civil penalties, costs of court, and attorney's fees.

Secs. 18-31—18-52. - Reserved.

II. CUMULATIVE CLAUSE

This Ordinance shall be cumulative of all provisions of the Windcrest Code of Ordinances except where the provisions of this Ordinance are in direct conflict with the provisions of an existing ordinance, in which event the conflicting provisions of such existing ordinance are hereby repealed and replaced by the provisions of this Ordinance.

III. SEVERABILITY

That it is hereby declared to be the intent of the City Council of Windcrest that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrases, sentences, paragraphs, or sections.

IV. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meetings at which this Ordinance was approved and adopted was open to the public 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.

V. EFFECTIVE DATE

This ordinance shall be effective upon passage and publication as required by state and local law.

VI. READING

FIRST READING approved by the City Council of the City of Windcrest this the 21st day of December, 2020.

SECOND READING DULY PASSED AND APPROVED, on the _____ day of January, 2021 at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

CITY OF WINDCREST, TEXAS

Dan Reese, Mayor

ATTEST:

Rachel C. Dominguez, City Secretary

APPROVED AS TO FORM:

Ryan Henry, City Attorney

ORDINANCE NO. 2021-002(O)

AN ORDINANCE ALLOWING TEMPORARY MOBILE FOOD VENDORS TO OPERATE ON A TEMPORARY BASIS BY AMENDING CHAPTER 14, OF THE CITY OF WINDCREST CODE OF ORDINANCES

WHEREAS, the City of Windcrest is a home-rule municipality located within Bexar County, Texas; and

WHEREAS, the City of Windcrest finds that during certain public, private and civic events, gatherings and other recreational areas in the city, a need for mobile food vendors may arise; and

WHEREAS, the City desires to make temporary permits for food vendors available so that the residents that may hold or attend an event or gathering will have the option of multiple food vendor options; and

WHEREAS, the City Council has determined it is appropriate, for good government and for the welfare and benefit of the public to amend the Code and allow temporary food vendors to obtain a permit under the provisions set out in the code.

I.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Article II, Divisions 1 & 2 of Chapter 14 of the Windcrest Code of Ordinances shall be amended with strike through text being deletions and underlined text being additions and shall read as follows:

DIVISION 1. - GENERALLY

Sec. 14-29. - Definitions.

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

Certified food handler means an individual who has been certified as a food handler as defined under 25 Texas Administrative Code, Chapter 229, Section 178 and Chapter 438 of the Texas Health and Safety Code or as otherwise specifically defined by the City's Code of Ordinances.

Food establishment means restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, luncheon counter, food stand, sandwich stand, soda fountain, and all other eating or drinking establishments as well as kitchens, catering services, barbecue pits, when not connected to an establishment already included in this article or other places in which food or drink is prepared for sale elsewhere. The term "food establishment" also includes all cafeterias or restaurants serving commercial establishments as part of the organization and serving the public whether as employees

or visitors. It shall also be construed to include such eating or drinking establishments operating in connection with any school, church, charitable or other institution within the corporate limits of the city and any meat markets, butcher shops, fish markets, bakeries, confectioneries, and ice cream factories. The term "food establishment" does not include a private residence where food is prepared and/or served only to individual family members or guests for their consumption, and beverage vending machines.

Food or beverage handler means any person, including a cook, cook's helper, waiter, waitress, dishwasher, bartender, barmaid, busboy or any other person, whether compensated or not, engaged in the delivery, storing, preparation, dispensing or serving of food or beverages for human consumption, or who engages in the handling, use, cleaning or preparation for use of any pots, pans, grills, skillets, plates, trays, eating and drinking equipment/utensils, or similar wares on which such foods or beverages are prepared, dispensed or served.

Food products or foodstuff means or includes any substance, whether solid or liquid and whether of animal or vegetable origin, intended to be used or commonly used as food or drink for human beings or for human consumption.

Limited event means a fair, carnival, circus, public exhibition, or other similar gathering that lasts for no longer than fourteen (14) days and does not occur on a regularly scheduled daily, weekly, or monthly cycle. The intent of this definition is to include events which occur on an annual cycle.

New establishment means a ~~food new eating or drinking~~ establishment or temporary food establishment ~~shall be one~~ which is newly erected or constructed at a given location or it may be such an establishment newly organized or started at an old location which will also include establishments remodeled from other construction. Any change in ownership will be considered a new establishment.

~~Permit shall be used to designate a license to operate issued by the city for a stated fee.~~ have the definition designated in Section 18-1 of the Windcrest Code of Ordinances.

State rules means rules found in 25 Texas Administrative Code, Chapter 229, ~~Sections 161 through 171 and Sections 173 through 175~~ Sections 172, and 176 through 178. These rules are also known as the Texas Food Establishment Rules.

Temporary food establishment means any eating or drinking establishment, eating or drinking mobile establishment or vehicle carrying such establishments ~~either operating for a temporary period (not to exceed 14 days) in connection with a fair, carnival, circus, public exhibition or other similar gathering, at a limited event, or where such eating or drinking establishments either large or small, operating from place to place as horse-drawn, motor-operated or hand-pushed conveyance, and shall also include the dispensing of food or drink by salesmen whether as samples, gifts or sold items either in hand or some container, and not in adequately sealed bottles or other packages, if for immediate consumption.~~

Temporary permit shall be used to designate a permit to operate a temporary food establishment issued by the city for a fee on a temporary basis only. A temporary permit also qualifies as a temporary business registration.

...

Sec. 14-69. - Required in city.

It shall be unlawful for any person to operate a food establishment or temporary food establishment without a valid ~~food establishment~~ permit issued by the city.

Sec. 14-70. - Application.

- (a) In addition to registration and permitting requirements for business registration found in Chapter 18 of this code, eEvery person desiring a permit to establish, maintain, or operate a food establishment within the city shall make written application, stating the name and residence of the applicant if an individual, or all the members of the firm if an association or partnership, or the name or residence of the applicant, its officers and directors if a corporation, and the location and description of the premises where such food establishment is to be conducted, and file such application with the city secretary.
- (b) Every person desiring a temporary permit for a temporary food establishment within the city shall make written application, stating the name or nature of the event, as described under Section 14-29, at which the person will be serving food, the name and residence of the applicant if an individual, or all the members of the firm if an association or partnership, or the name or residence of the applicant, its officers and directors if a corporation, and the location and description of the premises where such food establishment is to be conducted, and file such application with the city secretary no later than three (3) days before the date of the event. Temporary permit applications received after the deadline will be left to the discretion of the city health official to accept for review.

Sec. 14-71. - Health official's recommendations.

- (a) It shall be the duty of the city health official, upon the filing of such application, to make or cause to be made an investigation of the premises and equipment and appliances to be used in connection therewith for the purpose of determining the fitness and suitability of such premises for a food establishment from a sanitary standpoint, and when such inspection shall have been completed, the city health official shall file with the city manager his recommendation for or against the issuance of a permit- or temporary permit.
- (b) It shall be the duty of the temporary permit applicant to make available for inspection the premises, equipment, and appliances to be used during the event in connection therewith before the beginning date of the event. Should said applicant fail to do so, it is within the discretion of the city health official to refuse to inspect said premises, equipment, and appliances.
- (c) It shall be the duty of the temporary permit applicant to include with the application proof that, at all times during the hours which the applicant will be operating during the limited event, at least one employee will be on shift who is a certified food handler. Proof of such certification is deemed to be the equal to the city health official having

inspected the premises, equipment, and appliances, and issued, or caused to issue, a temporary permit.

Sec. 14-72. - Issuance.

If the city health official shall be satisfied that the applicant or its chief officers, if it is a corporation, is or are of good character and reputation, and that the premises, equipment and appliances where such food establishment or temporary food establishment is to be located, are proper and suitable from a sanitary standpoint, and meet all the requirements of the laws of the state or of the chapters of this Code relating to the conduct and operation of the business named in such application, he shall issue or cause to be issued a permit or temporary permit in accordance with such application, upon receipt of the appropriate permit fee provided by ordinance.

Sec. 14-73. - Form; expiration.

Any permit or temporary ~~Such~~ permit shall be issued under the corporate seal of the city, signed by the city health official and shall authorize the person therein named to establish, maintain and operate a food establishment or temporary food establishment at the place designated in such permit. Such permit shall expire a year from the date of issuance, except for temporary permits which are valid for two weeks, unless otherwise indicated; and thereafter shall be due and payable annually in advance no later than 12:00 midnight of the day which any prior permit expires, unless otherwise indicated.

Sec. 14-74. - Display of permit.

Every person authorized to operate in accordance with the provisions of this division shall post their ~~such~~ permit or temporary permit, or cause it to be posted, in a conspicuous place within the premises of the facility.

Sec. 14-75. – Revocation; Reissuance of permit.

(a) All permits or temporary permits issued under this section may be revoked by the city health official upon the violation by the holder of any of the terms of this chapter following which, unless corrections are immediately made, action may be instituted in the name of the city in any court of competent jurisdiction to obtain a restraining order or permanent injunction preventing such person from operating unless immediate compliance with the provisions of this chapter is obtained.

(b) Notwithstanding the revocation process listed in chapter 18 of this code for permits, revocation of a permit or temporary permit under this article is accomplished by the removal of the permit from the establishment by the city health official at which time he shall indicate on his inspection report which is issued to the establishment at the time of his inspection, the reasons for the revocation. If the city health official fails to remove the permit for any cause whatsoever, the revocation is still affected by the issuance of such statement on the inspection report, a copy of which is left at the establishment to the effect that the permit has been revoked.

- (c) Following issuance of any restraining order or injunction, re-application for permit or temporary permit may be made at any time, which permit shall be granted upon full compliance of such person with the provisions of this division.
- (d) In all such cases involving the possible revocation of a permit, reasonable effort shall be made by the city health official to secure compliance with the provisions of this section prior to the revocation of the permit of the offending establishment.
- (e) In addition to the revocation, the city health official is authorized to impose civil penalties as a designee of the City Manager's Office pursuant to chapter 18 of this code. Any order of the health official imposing civil penalties is appealable pursuant to Chapter 18 of this code.

~~All permits issued under this division may be suspended or revoked by the city health official upon the violation by the holder of any of the terms of this division. Revocation of a permit is accomplished by the removal of the permit from the establishment by the city health official at which time he shall indicate on the inspection blank which is issued to the establishment at the time of the inspection the reasons for the revocation. If the city health official fails to or is unable to remove the permit for any reason whatsoever, the revocation is still affected by the issuance of a statement on the inspection sheet, a copy of which is left at the establishment to the effect that the permit has been revoked and stating the reasons therefor.~~

Sec. 14-76. - Reinstatement.

- (a) Where a permit has been revoked or suspended, an application for the reinstatement of the permit may be filed with the City Secretary's Office which shall have included therewith a statement signed by the applicant certifying therein that the violated provision of this division has been corrected or complied with. Within one week after the receipt of this application, the city health official shall make a re-inspection reinsertion, and thereafter as many re-inspections as he may deem necessary to assure himself that the applicant has complied with the requirements herein. In the event the city health official's findings indicate compliance herewith, the city health official shall reinstate the permit after collection of reinstatement fees as established by ordinance in section 14-77 - Fees.
- (b) Where a temporary permit has been revoked, an application for the reinstatement of the temporary permit may be filed with the City Secretary's Office which shall have included therewith a statement signed by the applicant certifying therein that the violated provision of this division has been corrected or complied with. Within five business days after the receipt of this application, the city health official shall make a re-inspection, and thereafter as many re-inspections as he may deem necessary to assure himself that the applicant has complied with the requirements herein. In the event the city health official's findings indicate compliance herewith, the city health official shall reinstate the permit after collection of reinstatement fees as established by ordinance in section 14-77 - Fees.

Sec. 14-77. - Fees.

- (a) *Amounts.* The annual permit fee, temporary permit fee, and reinstatement after revocation fee to cover the city's costs incurred in conjunction with the inspection of food establishments located within the city shall be established by ordinance and shall be paid in advance upon issuance of such permit.

- (b) *Effect of hiring additional employees.* If, at any time during the period of validity of any license permit or temporary permit issued under this division, additional persons are employed by the establishment operating under such license permit, it shall be the duty of the persons in charge of such establishment to immediately notify the city health official of such increase and if such increase brings that establishment into a higher fee bracket, such persons shall pay to the city secretary the additional sum required. This charge shall be prorated by month.

Sec. 14-78. - Transferability of permit.

Permits and temporary permits, as required by this division, shall not be transferable from ~~either one food establishment or temporary food establishment at a different location to another,~~ ~~or~~ from one person to another person who may subsequently own a certain food establishment or temporary food establishment, nor from a permitted food establishment or temporary food establishment to that same establishment operating at a temporary event, except that a permit holder who operates a food establishment or temporary food establishment, may, upon his closing of that food establishment or temporary food establishment, for the purpose of continuing the business at another food establishment or temporary food establishment, apply to the city health official for a transfer of his permit or temporary permit to the new location. Such application shall be accompanied by an inspection fee in the amount established by ordinance. The city health official may affect such transfer either by endorsement of the address of the new location on the permit, or by cancellation of the permit and issuance of a new permit for the new food establishment or temporary food establishment.

...

Sec. 14-80. - Suspension; revocation, reissuance.

Repealed.

~~All permits issued under this section may be suspended or revoked by the city health official upon the violation by the holder of any of the terms of this chapter following which, unless corrections are immediately made, action may be instituted in the name of the city in any court of competent jurisdiction to obtain a restraining order or permanent injunction preventing such person from operating unless immediate compliance with the provisions of this chapter is obtained. Revocation of a permit is accomplished by the removal of the permit from the establishment by the city health official at which time he shall indicate on his inspection blank which is issued to the establishment at the time of his inspection, the reasons for the revocation. If the city health official fails to remove the permit for any cause whatsoever, the revocation is still affected by the issuance of the statement on the inspection sheet, a copy of which is left at the establishment to the effect that the permit has been revoked. Following issuance of any restraining order or injunction, re-application for permit may be made at any time, which permit shall be granted upon full compliance of such person with the provisions of this division. In all such cases involving the possible suspension or revocation of a permit, reasonable effort shall be made by the city health official to secure compliance with the provisions of this section prior to the suspension or revocation of the operating permit of the offending person.~~

Sec. 14-81. - Reinstatement.

Repealed.

~~Any restaurant, the permit of which has been suspended, may at any time make application for the reinstatement of the permit within one week after the receipt of a satisfactory application, accompanied by a statement signed by the applicant to the effect that the violated provision of this chapter has been conformed with, the city health official shall make a re-inspection, and thereafter as many additional re-inspections as he may deem necessary to assure himself that the applicant is again complying with the requirements, and, in the case where the findings indicate compliance, shall reinstate the permit. The fee for reinstatement is established in section 14-77.~~

Secs. 14-82—14-105. - Reserved.

II. CUMULATIVE CLAUSE

That this Ordinance shall be cumulative of all provisions of the City of Windcrest Code of Ordinances except where the provisions of this Ordinance are in direct conflict with the provisions of such existing Ordinance, in which event the conflicting provisions of such existing Ordinance are hereby repealed and this Ordinance controls.

III. SEVERABILITY

That it is hereby declared to be the intent of the City Council for the City of Windcrest that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrases, sentences, paragraphs, or sections.

IV. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public 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.

V. EFFECTIVE DATE

This ordinance shall be effective upon passage and publication as required by state and local law.

VI.

READINGS

DULY PASSED ON FIRST READING, on the 17th day of December, 2020 at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

DULY PASSED AND APPROVED, on the ____ day of January, 2021 at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

CITY OF WINDCREST, TEXAS

Dan Reese, Mayor

ATTEST:

Rachel Dominguez, City Secretary

APPROVED:

Ryan Henry, City Attorney

RESOLUTION NO. 2021-501(R)

**A RESOLUTION OF THE CITY OF WINDCREST TO
RESCHEDULE THE JANUARY 25, 2021, REGULAR CITY
COUNCIL MEETING TO TUESDAY, JANUARY 19, 2021.**

WHEREAS, the City of Windcrest City Council regularly meets on designated days during the month according to its legislative calendar; and

WHEREAS, the location of the City Council meeting, City Council Chambers in City Hall, will be closed for a maintenance and upgrades to the audio-visual equipment utilized to stream live each City Council meeting and Board and Commission meeting; and

WHEREAS, the Council finds that in order to properly and timely address City business and ensure interest of the City to reschedule the January 25, 2021 meeting; and

WHEREAS, the City will reset this January 25, 2021 meeting to January 19, 2021 at 6:00 p.m.; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS resolves to reset the January 25, 2021, regular meeting to January 19, 2021 at 6:00 p.m.

DULY PASSED AND APPROVED, on the _____ day of January 2021, at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

CITY OF WINDCREST, TEXAS

Dan Reese, Mayor

ATTEST:

Rachel C. Dominguez City Secretary

APPROVED:

Ryan S. Henry, City Attorney