

## **ORDINANCE NO. 811**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HOWE, TEXAS, ESTABLISHING THE MOBILE FOOD VENDOR PERMIT, FEE, AND PROVISIONS; AND PROVIDING A PENALTY NOT TO EXCEED FIVE HUNDRED (\$500.00) FOR VIOLATION OF THIS ORDINANCE.**

**WHEREAS**, the City of Howe has received a request for Mobile Food Vendor policies;  
and

**WHEREAS**, the City Council of the City of Howe, Texas seeks to protect the public health, safety and welfare through a comprehensive regulatory program that includes food safety standards; and

**WHEREAS**, there has been a review of these matters by the City staff; and

**WHEREAS**, there is a need to provide for the overall quality of life for the citizens of the City of Howe; and

**WHEREAS**, the City Council has assessed potential traffic safety threats, the utility needs of mobile stores in terms of water, wastewater, electricity, gas, and how those demands correspond to the community's infrastructure; and

**WHEREAS**, the City Council is authorized to regulate mobile food vendors by virtue of the Texas Constitution, the Texas Health and Safety Code, the Texas Administrative Code, the City's police power and by Chapters 51, 54, 211, 214, 216, and 217 of the Texas Local Government Code; and

**WHEREAS**, the City Council has determined it to be in the best interest of the City and its residents to adopt and enact the regulations herein; and

**WHEREAS**, the City Council of the City of Howe, Texas, finds that it is necessary to adopt this ordinance and the amendments in the interest of health, safety, and welfare of the citizens.

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

### **Section 1. FINDINGS INCORPORATED**

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

### **Section 2. MOBILE FOOD VENDORS**

- A.** Mobile Food Vendors and mobile food units (or Mobile Food Units) shall comply with the following requirements:
1. A valid Retail Food Establishment Permit must be posted in or on every applicable food

- establishment.
2. All Mobile Food Vendor Permit Applications must be submitted on a City approved form with a site plan depicting the location of the mobile food establishment, and non-refundable permit fee of \$150.00.
  3. Prior to the city's approval, the regulatory authority shall inspect the proposed food establishment to determine compliance with state laws and regulations.
  4. The mobile food unit shall have during each shift at least one on-duty, on-site manager that has obtained a food service manager certificate and has been issued a current Food Manager Permit by the regulatory authority.
    - a. It shall be unlawful for a mobile food vendor to employ or permit any food handler to work at a mobile food unit unless such food handler has obtained a food handler certificate.
  5. The owner of the non-residential property on which the mobile food unit is located shall agree in writing on the face of the permit to be bound by all of the terms and conditions of the permit and to allow the mobile food unit and its employees access to a toilet and handwashing facilities during the hours of operation of the mobile food unit.
  6. Mobile food units may only operate in non-residentially zoned districts and on property by written permission as set out in this ordinance.
  7. Temporary connections to potable water are prohibited. Water shall be from an internal tank, and electricity shall be a generator or an electrical outlet via a portable cord that is in conformance with the most current electrical code adopted by the city. Mobile food units shall collect and store all wastewater in an internal tank.
  8. Mobile food units (except trailers operating under a seasonal mobile food vendor permit) shall not remain at their operating site when they are closed.
  9. No person may operate a mobile food unit on a sidewalk.
  10. No person may operate a mobile food unit in a manner that reduces the number of available parking spaces in a given lot to below the number required by the city's Zoning Ordinance.
  11. A mobile food unit may not park at any one location in the public right-of-way for more than two (2) consecutive hours and may not operate for more than ten (10) hours during any twenty-four (24) hour period.
  12. No person may operate a mobile food unit in such a manner that impedes or disrupts traffic flow on city streets or draws pedestrians into the street right-of-way. The owner or operator of a mobile food unit shall not place displays, merchandise, seating or temporary shelters in locations that obscure traffic or interfere with sidewalks.
  13. All signs will be subject to the city's sign ordinance.
  14. Outside walking, driving, and parking areas shall be surfaced with concrete, asphalt, or gravel (6" minimum depth), with the exception of a special event, as defined herein.
  15. Each mobile food unit shall be equipped with a portable trash receptacle and shall be responsible for proper disposal of solid waste and wastewater in the sanitation facility legally accessed by the mobile food unit.
  16. Wastewater will not be allowed to drain on the ground or public roadway or be deposited into any sewer drain outlet.

17. A no smoking sign must be posted next to the order window area.
18. A sales tax affidavit will be required with the permit application, and the affidavit shall acknowledge that all sales made within the city will be reported to the state comptroller as occurring within the city.
19. No person shall conduct mobile or roadside vending operations within the city involving the display or sale of merchandise requiring payment of state and local sales and use tax without displaying a sales and use tax permit and without reporting all taxable transactions resulting from the vending sales within the city to the state comptroller of public accounts as having been transacted in the city.
20. Each mobile food vendor must maintain and provide proof on demand of a valid insurance policy that provides minimum liability coverage of \$500,000.00 per mobile food unit.
21. Each mobile food vendor must provide to the city proof of valid vehicular insurance that conforms with minimum coverage requirements of the state.
22. Installed Liquified Petroleum Gas (hereinafter LPG) piping shall be of an approved, labeled and listed type for use with the cooking appliances. Rubber type hoses shall not be allowed. All piping shall be in accordance with the most recently published National Fire Protection Association and shall be protected against physical damage.
23. Maintain within a Mobile Food Unit a maximum of 200 gallons LPG located within a vented compartment: containers shall not be ahead of the front axle or beyond the rear bumper of the vehicle. An ASME tank is required for permanently installed tanks.
24. Maintain within a Mobile Food Unit a maximum of 200 gallons LPG located outside but mounted upon the trailer or vehicle in a protected location: containers shall not extend beyond the rear bumper.
25. LPG cylinders shall not exceed 100 pounds.
26. LPG cylinders shall have an approved label and listed shut-off valve.
27. All LPG cylinders shall be protected from damage and secured with a solid bracket.
28. The storage of LPG cylinders inside trucks and/ or trailers is prohibited.
29. All valves must be turned off when appliances/ cylinders are not in use.
30. "No Smoking" signs shall be posted. Additionally, the signage should be visible near any propane containers.
31. Electrical:
  - a. Extension cords shall not be utilized, nor are they a substitute for permanent wiring.
  - b. An appropriately sized power supply cord with corresponding connections will be allowed. The cord will be sized according to the vehicle's electrical demands.
  - c. Appliances shall be plugged directly into electrical outlets.
  - d. All electrical outlets within six feet of a wet location shall be Ground Fault Circuit
  - e. Interrupter (hereinafter GFCI) protected. All exterior outlets shall be GFCI protected.
  - f. Upon application, a generator may be approved subject to restrictions on noise, hours of use and other regulations and restrictions as determined by the City Administrator.

32. Fire Extinguishers:

- a. All fire extinguishers require an annual inspection by a Texas licensed fire extinguisher company. Required extinguishers must be properly mounted and readily accessible.
- b. At least one portable extinguisher of the 2A10BC rating shall be accessible to the interior of the food truck/trailer.

33. Units utilizing oil/grease fryers are required to have a Class K fire extinguisher on the unit.

34. Fire Suppression System:

- a. Mobile Food Units which perform cooking operations that produce grease laden vapors shall have a Type 1 hood with ventilation.
- b. Type 1 hoods shall be protected by a UL 3200 or UL 300A fixed fire extinguishing system.
- c. A Biannual system inspection is required for all fire suppression systems by a Texas licensed fire suppression company.

35. All cooking Surfaces and hoods are to be kept clean to prevent grease build- up.

36. Fire Lanes and Fire Access and Driveways:

- a. Mobile Food Units shall not park in marked fire lanes. They shall not block fire department access or driveways that serve as access.

37. Mobile Food Vendor Permit renewals are required on an annual basis. Mobile food vendor permits are not transferrable.

38. Any violation of the above rules shall result in reprimands up to and including immediate revocation of the permit, instant eviction and/or an automatic refusal on any permits in the future. Such revocation or eviction does not preclude other enforcement actions.

**Section 3. Seasonal Mobile Food Vendors:**

1. **Seasonal Mobile Food Vendor Permits** allow mobile food vendors to serve food to the public on a routine basis for a period of no less than fourteen (14) consecutive days and no more than six (6) months in a one-year period, while maintaining all other rules and regulations for food establishments set forth by the regulatory authority.
2. Seasonal mobile food vendors are limited to only preparing and offering the sale of the following foods:
  - a. Snow cones and snow cone products
  - b. Pre-packaged foods; and
  - c. Ice Cream
3. All seasonal mobile food units must be capable of maintaining required

temperatures and protection from contamination for all food products. A visible thermometer must be provided.

4. The holder of a seasonal mobile food vendor permit may leave a trailer unit at a single site for up to six (6) months without moving the trailer.
5. Seasonal Mobile Food Vendor Permits require renewals each six (6) months.
6. **Seasonal mobile food units must adhere to all of the same guidelines and regulations as those prescribed for mobile food units.**

#### **Section 4. Denials / Suspensions / Penalties:**

1. The city shall deny an application for a Mobile Food Vendor Permit if the permit application is incomplete, incorrect, or shows that a person is not otherwise entitled to conduct business as a mobile food vendor; or the applicant has failed to obtain required approvals from the state or any other governing body or obtain any applicable permits or licenses.
2. A permit may be revoked for failing to conform to the specifications found in the mobile food permit's application, including the location, site plan, or other requirements.
3. The city may, without warning or notice, suspend a Mobile Food Vendor Permit if the operation of the mobile food unit constitutes an imminent hazard to public health, as solely determined by the city. Upon suspension, food operations shall immediately cease.
4. A Mobile Food Vendor Permit may be suspended or revoked for not complying with the requirements of this chapter or any other ordinance or law.
5. The permit holder of a mobile food unit that does not comply with the requirements of state rules and any responsible officer of that permit holder or those persons shall be fined not more than \$500.00.

Unless exempted from the provisions of this article, it shall be unlawful for a person to engage in, transact or conduct the business or occupation of a mobile food unit within the city without first having obtained a mobile food unit permit from the city or to violate any provision of this article. Any person, firm, entity or corporation violating a provision of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine not to exceed \$500.00 for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. Each incident is a separate violation. The penal provisions imposed under this article shall not preclude the city from filing suit to enjoin the violation. The city retains all legal rights and remedies available to it pursuant to local, state and federal law.

**Section 5. Severability.** If any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**Section 6. Effective Date.** This Ordinance shall take effect immediately upon its adoption by the City Council and publication as required by the Local Government Code.

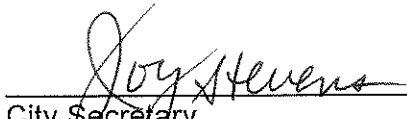
**Section 7. Open Meetings.** That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Tex. Gov't. Code.

**Section 8. Savings.** This Ordinance shall be cumulative of all provisions of ordinances of the City of Howe, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances. Where provisions of other ordinances conflict with this ordinance, the more restrictive or stringent provision shall control. This Ordinance, upon its enactment and effective date, only to the extent there is a direct conflict and the more restrictive ordinance cannot be applied, shall repeal conflicting provisions that may be contained in other City ordinances or regulations, except to the extent they apply to obligations and violations arising prior to the enactment of this Ordinance. The penalties provided in this Ordinance shall be cumulative and not exclusive of any other rights and remedies the City may have. In addition to and accumulative of all other penalties, the City shall have the right to seek injunctive relief, pursue civil enforcement, seek attorneys' fees and costs, and take any other action for any and all violations of this ordinance.

16<sup>th</sup> **DULY PASSED AND APPROVED** by the City Council of the City of Howe, Texas, on the day of January, 2024.

  
Karla McDonald, Mayor

ATTEST:

  
City Secretary

