

ORDINANCE NO. 1176

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF DUMAS, CHAPTER 22 BUSINESS, ARTICLE VIII ORDINANCE NO. 1166 IS HEREBY AMENDED BY THE AMMENDING OF § I. (A) DEFINITONS OF GREASE & GREYWATER AND (I) 2. PERTAINNING TO APPROVED METHOD OF DISPOSING OF GREASE & GREYWATER, 1. PROVIDING FOR MOBILE FOOD VENDOR REGULATIONS; CONTAINING A REPEALER CLAUSE; CONTAINING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED \$2000.00 PER VIOLATION IN ACCORDANCE WITH SECTION 1 OF THE CODE OF ORDINANCES; AND PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR CODIFICATION; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

WHEREAS, in recent years, the number of restaurants and retail store and other establishments which provide food for human consumption in the City of Dumas has increased dramatically and continues to increase; and

WHEREAS, the City has seen an interest from mobile food vendors desiring to offer edible food products to local citizens and visitors to the City of Dumas; and

WHEREAS, the City Commission desires to allow mobile food vendors to operate in the City of Dumas with special emphasis in the City's Downtown District; and

WHEREAS, in order to protect the health, safety and welfare of its citizens, the Dumas City Commission deems it appropriate to provide for regulation of mobile food vendors to be located in the City of Dumas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DUMAS, TEXAS, AS FOLLOWS:

CHAPTER 22: BUSINESSES, is hereby amended by adding, **ARTICLE VIII MOBILE FOOD VENDORS** and shall read in their entirety as follows:

ARTICLE VIII MOBILE FOOD VENDORS

SECTION I.

(A) DEFINITIONS

Edible goods may include, but are not limited to:

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

Grease shall mean used cooking oil, spent shortenings, or any other inedible kitchen grease or waste vegetable oil produced by restaurant and food facilities.

Greywater shall mean the wastewater from the laundry, kitchen and bathroom (shower, bath and bathroom basins) arising from daily activities such as washing clothes, washing dishes.

Mobile food vendors shall mean any business which sells edible goods from a nonstationary location within the city. The terms shall include, but not be limited to:

1. Mobile food trucks: a self-contained motorized unit selling items defined as edible goods.
2. Concession trailers: a vending unit which is pulled by a motorized unit and has no power to move on its own.

Non-refrigerated shall mean edible goods that are not required to be kept at a temperature below 41 degrees Fahrenheit according to the Federal Food and Drug Administration and the Texas Food Establishment Rules.

(B) PERMIT AND APPLICATION

1. *Permit.* Every mobile food vendor shall have a permit issued by the city to conduct business in the city. A permit and a permit fee may be waived for a period of 72 hours for special events approved by the City Commission.
2. *Application.* Every mobile food vendor shall apply for a permit on a form promulgated by the city. Each vending unit requires a separate permit. Applications for permits meeting the requirements for mobile vendors shall be processed within ten (10) business days.

3. *Permit form.* A complete application shall require the following information from the applicant to be considered:
 - a. Name of applicant.
 - b. Legal name of business or entity.
 - c. State of incorporation or filing of a partnership or articles of association.
 - d. If applicable, copy of charter or articles of incorporation and current listing of the directors, partners, or principles.
 - e. Sales tax number with a copy of sales tax permit.
 - f. Signed permission form or provide notarized affidavit from the private property owner granting permission for unit placement.
 - g. Name, phone number and driver's license number of business owner and all employees operating within the mobile food vendor unit.
 - h. Proposed itinerary with route, vending locations and times.
 - i. Contact name and phone number for mobile food vending unit while in route.
 - j. Description of product being sold.
 - k. Site plan where the Mobile food vending unit will be located on the property.
 - l. Vehicle identification number and description of mobile food vending unit.
 - m. Signed affidavit with photo identification that each individual applicant:
 - a. Has no unpaid civil judgments against him or her in any state of U.S. possession which arise from a business activity which would have been covered by this section if in effect at the time in the jurisdiction where such judgments are of record.

- b. A statement of all convictions in any state, the United States, or U.S. possession within the last ten years.

(C) PERMIT FEE

1. The application fee for a mobile food vendor permit shall be \$200.00 per year for residents of Dumas, Texas and \$400.00 per year for non-residents of Dumas, Texas. Each mobile food vendor unit shall be permitted separately.
2. Mobile food vendor permits shall be valid for one year from the date of permit issuance.
3. Upon renewal the applicant shall pay a renewal fee, as stated above, and update any changes in the permitting documentation upon permit renewal. The applicant must submit the application and the renewal fee within 30 days before expiration of the permit or must reapply as a new applicant.
4. A daily permit shall be allowed for mobile food vendors at the rate of \$45.00 per day. Daily mobile food vendors shall be required to comply with all other requirements under this ordinance and/or Texas law.

(D) PERMIT DENIAL

A permit may be denied where:

1. An applicant is found to have an unpaid civil judgment(s) against him which relates to the duties and responsibilities of the permitted occupation which shall be determined by the nature and amount of the judgment, the relationship of the judgment to the purpose of the permit and the extent that the permit would allow someone to engage in further activity that would lead to unsatisfied civil judgments; or
2. An applicant has been convicted of a crime which directly relates to the duties and responsibilities of the licensed occupation which shall be determined by the nature and seriousness of the crime, the relationship of the crime to the purpose of the permit and the extent that the permit would allow someone to engage in further criminal activity; or
3. The required information is incomplete or incorrect or shows that a person is not otherwise entitled to conduct business as a mobile food vendor.

The opportunity to issue a permit has been denied due to previous violations as described in this section.

Display of Permit. Every permit, including those from the city, shall be displayed at all times in a conspicuous place where it can be read by the general public on the mobile food vendor's truck or concession trailer.

(E) PERMIT REVOCATION OR SUSPENSION

1. A permit may be revoked upon conviction of any offense committed by an individual operating as a mobile food vendor in the city while engaged in the permitted business, or if a final conviction occurs or is found to have existed at the time of application, or if civil judgments, as set forth above, are placed or found of record against an applicant. A permit may be suspended in the event of pending charges of a crime, as set forth above, upon a magistrate's determination of probable cause in connection with such charges.
2. A permit may be revoked for non-conformity to the application location specifications or requirements as well as to non-conformity to an approved location plan or diagram
3. Any employee working for an applicant permitted as an employer under this section above may be denied the right to solicit under such permit, or such rights may be suspended or terminated, under the same circumstances and procedures which apply to the holder of the permit. Revocation or suspension of an employer's permit terminates all employee permits.
4. A permit may be suspended or revoked for not complying with the requirements of this section, or any other ordinances, or laws.
5. Failure to pay outstanding parking meter fees and fines.

(F) APPEAL OF PERMIT REVOCATION, SUSPENSION, OR DENIAL

1. The notice of revocation, suspension, or denial of a permit shall include the procedure for appealing the suspension, revocation, or denial.
2. If a city official revokes, suspends, or denies a mobile food vendor permit, the holder or applicant of the permit which has been revoked, suspended, or denied,

shall have the right of appeal to the city manager, or designee by submitting an appeal in writing to the city manager within ten business days of the revocation, suspension, or denial.

3. Pending action on the appeal, a permit which has been revoked or suspended shall be considered revoked or suspended.
4. If a written appeal is not submitted within the ten business days of revocation, suspension, or denial, or if the appeal is denied, the permit shall hence be considered revoked, suspended or denied.

(G) REAPPLICATION AFTER REVOCATION, SUSPENSION, OR DENIAL OF PERMIT

1. If a mobile food vendor or applicant is not in compliance with this section or any other ordinance, law or the approved vendor application, the following action will be taken:
 - a. *1st violation.* A warning may be issued, or the permit may be revoked or suspended and the vendor may become ineligible for a new or reissued permit for 90 consecutive days.
 - b. *2nd violation.* Permit will be revoked and the vendor may become ineligible for a new or reissued permit for 90 consecutive days.
 - c. *3rd violation.* Permit will be revoked and the vendor will become ineligible for new or reissued permit for one year.
 - d. If an applicant's permit has been denied and the appeal is denied the applicant may not reapply for 90 consecutive days.

(H) ZONING AND LOCATION RESTRICTIONS

1. Distance regulations:
 - a. No mobile food vendor shall conduct business within any single-family residential or agricultural zoning district unless otherwise approved in writing by the planning and zoning director.

- b. A mobile food vendor may not be located within 100 feet of the primary entrance of an open and operating fixed-location food service or eating establishment except during city sponsored or other community events.
 - c. A mobile food vendor shall not be located within 40 feet from another mobile food vendor except during city sponsored or other community events.
2. A mobile food vendor shall not conduct sales at a stationary location:
- a. For a duration exceeding sixty (60) minutes on any public street or public streets adjacent to public parks and recreational facilities, next to fire lanes and no-parking designated areas. Mobile food vendors parking on parking metered spaces in the Downtown District will be required to deposit coins for payment of parking meter. Mobile vendors parking on public streets may not move to a new location without prior approval from the City.
 - b. On any public street.
 - c. In congested areas where the operation impedes vehicular or pedestrian traffic.
 - d. Between the hours of 3:00 a.m. and 6:00 a.m.
3. Location regulations:
- a. No mobile food vendor shall be located on any private property without written permission to do so and must comply if asked to leave by the property owner or city official. A copy of the written permission to operate in a specific location signed by the private property owner, shall be kept within the mobile vending unit at all times.
 - b. Any mobile food vendor shall not be located within the following prohibited zone: An area with the South border of 14th Street and a North border of North 5th Street; the East border of Porter Street and the West border of Bliss Street.
 - c. If the mobile food vendor owns the property on which the mobile food unit is located, the mobile food vendor may be exempt from location regulations herein.

- d. No vendor shall distribute, deposit, place, throw, scatter or cast any commercial handbill.
- e. No vendor shall distribute, deposit, place, throw, scatter or cast any commercial handbill upon any premises if requested by the property owner or city not to do so, or if there is placed near or at the entrance thereof a sign bearing the words "no advertisement".
- f. No vendor shall sell or offer for sale any item upon any premises if requested by the property owner or city official not to do so, or if there is placed at or near the entrance thereof a sign bearing the words "no peddlers or vendors," "no trespassing," or "no solicitors."

(I) MOBILE FOOD VENDOR REQUIREMENTS

The following regulations shall apply to mobile food vendors within any zoning district:

1. Mobile food establishments shall operate from a central preparation facility or other permitted fixed food establishment and shall report to such location for supplies and for cleaning and servicing operations.
2. Each unit shall be equipped with a portable trash receptacle, and shall be responsible for proper disposal of solid waste and waste water in the sanitation facility legally accessed by the food service establishment. All disturbed areas must be cleaned following each stop to a minimum 20 feet of the sales location. All grey water with any grease particles must have the grease solidified and/or separated from the grey water, or run through a grease trap, or have the grease broken down and/or removed by another approved process. Then all grease must be disposed of in an approved grease disposal container before the grey water is disposed of at an approved grey water disposal site (i.e. Texhoma Park).
3. Mobile food vendor may not have a drive through.
4. Mobile food vendor may be allowed to have multiple locations within a day but not exceeding twelve (12) cumulative hours of operations per location. A list of the locations must be submitted to and approved by the Health Authority.
5. Continuous music or repetitive sounds shall not project from the mobile unit.
6. A five-foot clear space can be maintained around the mobile food vending unit.

7. The mobile unit will be subject to inspection upon permit application through the code enforcement, health department and the fire marshal, and may be subject to random inspection and upon reissuance of the permit.
8. No sales are allowed within public park facilities while park concession units are operating. Mobile units operating in public parks and on streets adjacent to public parks or recreational facilities requires approval by the Parks superintendent.
9. A "No Smoking" sign must be posted next to the order window or area.
10. An approved portable type ABC fire extinguisher tagged by a licensed company shall be kept accessible as directed by the city fire marshal or designee. A portable type K fire extinguisher is also required in the kitchen for cooking operations.
11. A kitchen fire suppression system and kitchen ventilation systems is required to be NFPA 17A and NFPA 96 compliant and shall be required when the cooking process produces grease laden particles within the mobile unit. Said systems shall require testing in the presence of a city fire marshal or designee.
12. All cooking appliances shall be UL approved appliances.
13. If cooking and using propane, a gas pressure test must be performed by a licensed plumber.
14. Each mobile food unit shall be equipped with a portable trash receptacle placed near the unit and shall be responsible for proper disposal of solid waste. All areas within 25 feet of the mobile food unit sales location shall be cleaned by vendor. Any liquid spills made by the mobile food unit shall be properly cleaned each day or following each stop.
15. Any mobile food unit shall not sale alcohol.

(J) OFFENSES AND REGULATIONS

1. It shall be unlawful for any individual as the agent or employee of another regulated under this section to sell edible goods in the city unless its principal or employer has received a permit under this section.
2. A permit issued under this section is not transferable.

3. It shall be unlawful for an individual to sell edible goods while displaying a valid permit issued by the city in the name of another individual, organization, or entity.
4. It shall be unlawful for any individual directly or through an agent or employee to sell goods within the corporate limits of the city after the expiration of the permit issued by the city under this section.
5. It shall be unlawful for an individual directly or through an agent or employee to misrepresent on the permit affidavit any acts that are regulated under this section.
6. It shall be unlawful for any individual directly or through his agents or employees to represent that the issuance of a permit by the city constitutes the city's endorsement or approval of the product for sale.
7. It shall be unlawful to operate a mobile food vendor operation that is not in compliance with the Texas Food Establishment Rules as amended from time to time.

SECTION II.

REPEALER CLAUSE: This Ordinance shall be cumulative of all other ordinances dealing with the same subject and any provision of any ordinance in direct conflict with any provision of this Ordinance is hereby repealed and the provisions of this Ordinance shall supersede any provisions in conflict herewith; all provisions of any other ordinance not in conflict herewith shall remain in full force and effect.

SECTION III.

SAVINGS CLAUSE: If any section, part, or provision of this Ordinance is declared unconstitutional or invalid, by a court of competent jurisdiction, then, in that event, it is expressly provided, and it is the intention of the City Commission in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

SECTION IV.

PENALTY CLAUSE: Each violation of any of the provisions of this Ordinance shall constitute a separate offense and shall, upon conviction thereof, be punishable by a fine not to exceed \$2,000 in accordance with Part II, Section 1-13 of the Code of Ordinances of the City of Dumas.

SECTION V.

PUBLICATION AND EFFECTIVE DATE: This Ordinance shall take effect immediately upon its passage and publication according to law.

SECTION VI.

CODIFICATION: The provisions of this Ordinance shall be published in the appropriate sections of Chapter 22, Businesses, of the Code of Ordinances of the City of Dumas, Texas, as soon as practicable.

PASSED AND APPROVED on the Second and Final Reading this 3rd day of September, 2019.

CITY OF DUMAS, TEXAS

By: _____
Bob Brinkmann, Mayor

ATTEST:

By: _____
Tonya Montoya, City Secretary