

ORDINANCE NO. 2016-34

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS AMENDING SECTION 32-2, EXCEPTIONS TO CHAPTER, AND SECTION 32-8, RESPONSIBILITY OF OWNERS, TENANTS, AND LESSEES ALLOWING PEDDLERS TO UTILIZE PROPERTY, OF ARTICLE 1, IN GENERAL, OF CHAPTER 32, PEDDLERS AND SOLICITORS, TO ALLOW MOBILE FOOD VENDORS REGISTERED WITH THE CITY IN COMPLIANCE WITH THE CITY'S ZONING REGULATIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00 FOR ANY VIOLATION HEREOF WITH EACH DAY CONSTITUTING A SEPARATE OFFENSE; PROVIDING FOR SEVERABILITY AND PROVIDING OTHER FINDINGS RELATED HERETO.

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WHEREAS, the City of Tomball, Texas desires to exempt mobile food vendors from the requirements of Chapter 32 when the vendors are operating in accordance with the City's zoning regulations related thereto; and

WHEREAS, the City Council of the City of Tomball, Texas finds it to be in the best interest of the health, safety and welfare of its citizens to exempt mobile food vendors from the requirements of Chapter 32 as set forth herein; **now, therefore**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The facts and matters set forth in the preamble to this ordinance are hereby found to be true and correct.

Section 2. The Code of Ordinances of the City of Tomball, Texas is hereby amended by adding to Section 32-2, Exceptions to Chapter, of Article 1, In General, of Chapter 32, Peddlers and Solicitors, the language underscored below as follows:

“Section 32-2. - Exceptions to chapter.

The provisions of this chapter shall not apply to the following:

- (1) Sales made to dealers or permanent merchants by commercial travelers selling in the usual course of business.
- (2) Sheriffs, constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law.
- (3) Bona fide residents of the state selling fruits, vegetables, dressed meats, fowl or farm products which were produced on land within the state, owned or controlled by such vendor.
- (4) Noncommercial solicitations, sales or distributions for purposes of fundraising or generating profits by religious or charitable organizations, political organizations, conservation organizations, city civic organizations, or other educational organizations, which have their principal place of activity within the city.
- (5) Minors conducting fundraising activities who represent an organization for the benefit of youths, including, but not limited to, Boy Scouts, Girl Scouts, Little League groups and city school groups.
- (6) Mobile food vendors that are registered with the city and conducting business at a mobile food court as defined in Section 50-2.

Section 3. The Code of Ordinances is further amended by deleting the language struck through below and adding the language underscored below to Section 32-8, Responsibility of Owners, Tenants, and Lessees Allowing Peddlers to Utilize Property, of Article 1, In General, of Chapter 32, Peddlers and Solicitors as follows:

“Section 32-8. - Responsibility of owners, tenants and lessees allowing peddlers to utilized property.

Any property owner, tenant, or lessee who allows a peddler to utilize his private property shall be responsible, along with the peddler, for compliance with the adopted zoning regulations of the city set forth in chapter 4850. Approval by the zoning administrator must be obtained before a permit may be issued.”

Section 4. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and,

upon conviction, shall be fined in an amount not to exceed \$2000. Each day of violation shall constitute a separate offense.

Section 4. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 5. This Ordinance shall take effect fourteen (14) days from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 19TH DAY OF DECEMBER 2016.

COUNCILMAN HUDGENS	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 3RD DAY OF JANUARY 2017.

COUNCILMAN HUDGENS	<u>AYE</u>
COUNCILMAN STOLL	<u>ABSENT</u>
COUNCILMAN DEGGES	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

Gretchen Fagan
Gretchen Fagan, Mayor

ATTEST:

Doris Speer
Doris Speer, City Secretary