

**TOWN OF FLOWER MOUND, TEXAS**

**ORDINANCE NO. 32-20**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 18, "BUSINESSES," OF THE TOWN'S CODE OF ORDINANCES, SECTION 18-91, "DEFINITIONS," TO ADD DEFINITIONS TO REGULATE ICE CREAM TRUCKS; ADDING SECTION 18-127, "ICE CREAM TRUCKS," TO ESTABLISH REGULATIONS FOR ICE CREAM TRUCKS; AMENDING SECTION 18-267, "SOLICITATION ON PUBLIC PROPERTY," TO ALLOW ICE CREAM TRUCK VENDORS TO OPERATE WITHIN THE PUBLIC RIGHTS-OF-WAY; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Flower Mound is a home rule municipality acting under its charter adopted by the electorate pursuant to Article XI, Section 5, of the Texas Constitution and Chapter 9 of the Local Government Code; and

**WHEREAS**, the Town Council of the Town of Flower Mound previously adopted the Texas Department of State Health Services "Texas Food Establishment Rules" found in the Texas Administrative Code; and

**WHEREAS**, the Texas Food Establishment Rules contain regulations for Mobile Food Units; and

**WHEREAS**, the Town finds that the permitted operation of ice cream trucks and similar Mobile Food Units do not create a health hazard or nuisance when properly regulated; and

**WHEREAS**, the Town Council finds that the regulations adopted herein are in the best interest of the Town of Flower Mound and will promote the health, safety, and general welfare of the citizens of the Town of Flower Mound and the general public.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, THAT:**

**SECTION 1**

Chapter 18, "Businesses," Article III, "Food and Food Establishments," Division 2, "Food Service Establishments," Subdivision I, "In General," Section 18-91 "Definitions," of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended by adding the following:

**"Sec. 18-91. – Definitions.**

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*Mobile ice cream truck* means a permitted mobile food unit/establishment that vends pre-wrapped and sealed ice cream, soft serve ice cream, canned soft drinks, pre-packaged candy, chips, and pickles.

*Mobile ice cream vendor* means any person who has obtained a valid permit to operate a mobile ice cream truck on the public right-of-way to sell goods as permitted herein to customers for immediate consumption.

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*Sunset:* The time in the evening established by the National Oceanic and Atmospheric Administration (NOAA)."

## **SECTION 2**

Chapter 18, "Businesses," Article III, "Food and Food Establishments," Division 2, "Food Service Establishments," Subdivision II, "Permit," of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended by adding Section 18-127, "Ice Cream Trucks," to read as follows:

"Sec. 18-127. - Ice Cream Trucks.

- (a) Any person desiring to operate as a mobile ice cream vendor shall submit an application and appropriate fee, found in Appendix A of this Code, to the Town.
- (b) All mobile ice cream vendors and mobile ice cream truck employees must submit to and pass an approved background check through the Flower Mound Police Department prior to operating a mobile ice cream truck.
- (c) Mobile ice cream vendors shall comply with all applicable Town and state health laws and regulations.
- (d) All sales shall take place between the hours of 11am and sunset.
- (e) Mobile ice cream vendors shall not vend within 40 feet of any intersection, stop sign, flashing beacon, yield sign, or other traffic control signal located on the side of a roadway.
- (f) Mobile ice cream vendors shall not sell within two city blocks or 600 feet, whichever is greater, of the grounds of a public, private, or parochial elementary or secondary school between the hours of 11am and 4:30pm on days when school is in session.
- (g) Mobile ice cream vendors shall only vend on the passenger side of the ice cream truck.
- (h) Mobile ice cream trucks shall park in the right-of-way, as far as practicable from traffic, when stopping for the purpose of making sales and shall operate emergency flashers when stopped. In no event shall a mobile ice cream truck stop for the purpose of making sales that prevent passage of other motor vehicles on the right-of-way or impede the flow of vehicular or pedestrian traffic.
- (i) No signage or other obstructions shall block the windows of a mobile ice cream truck.

- (j) The lawful name of the mobile ice cream truck shall be displayed on the vending/passenger side of the truck at all times.
- (k) The menu and price lists shall only be displayed on the vending/ passenger side of the mobile ice cream truck.
- (l) No mobile ice cream vendor shall sell alcoholic beverages, controlled substances, or any other item the possession or use of which is deemed illegal under any federal, state, or local law.
- (m) Mobile ice cream trucks and vendors may only operate a horn, sound amplification system, or other sound producing device or music system during authorized vending periods. Mobile ice cream trucks and vendors shall not operate any such horn, sound amplification system, or other sound producing device or music system when the truck is stationary or in a manner that creates a noise disturbance as defined in Chapter 34, Sections 34-181 and 34-182 of the Town's Code of Ordinances.
- (n) Pre-packaged candy, chips, and soft drinks must be sold in commercially packaged, single-portion units.

### **SECTION 3**

Chapter 18, "Businesses," Article IV, "Solicitation Activities," of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended by amending Sub-section 18-267(a), "Solicitation on public property," to read as follows:

**"Sec. 18-267. – Solicitation on public property.**

- (a) It shall be unlawful for any person to peddle, hawk, sell, solicit, distribute, or take orders for any services, wares, merchandise, or goods, including, but not limited to, magazines, encyclopedias, tools, photographs, flowers, candy, plants, or statues on the streets, street rights-of-way, or medians of the town, unless otherwise permitted as a Mobile Ice Cream Vendor. This prohibition shall apply to and include any institution or group organized for a political, religious, or charitable purpose, or individuals engaging in such activities on behalf of any such institution or group."

### **SECTION 4**

Appendix A, "Fee Schedule," of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended by amending Chapter 18, "Businesses sub-section 18-123(a), to read as follows:

"Code Section Number	Description
<a href="#">18-123</a>	Food establishment fees

- (a) *Food establishment permit fees.* Each separate food establishment operating within the corporate limits of the Town of Flower Mound shall pay the following fees:

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Mobile Ice Cream Truck (annually) .....\$150.00”

#### **SECTION 5**

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the Town of Flower Mound, Texas, as amended, except when the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such code, in which event the conflicting provisions of such ordinances and such code are hereby repealed.

#### **SECTION 6**

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

#### **SECTION 7**

Any person, firm, or corporation who violates any provision of this Ordinance as adopted by the Town Council of the Town of Flower Mound shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine as provided in Section 1-13 of the Code of Ordinances of the Town of Flower Mound. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

#### **SECTION 8**

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the Texas Food Establishment Rules or any ordinances governing food establishments that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

#### **SECTION 9**

The Town Secretary of the Town of Flower Mound is hereby directed to publish the caption in the official newspaper of the Town of Flower Mound as required by Section 3.07 of the Charter of the Town of Flower Mound.

#### **SECTION 10**

This Ordinance shall be in full force and effect from and after the date of its passage and publication as required by law, and it is so ordained.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF 5 TO 0, ON THIS THE 19th DAY OF OCTOBER, 2020.**

**APPROVED:**

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**Steve Dixon, MAYOR**

**ATTEST:**

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**Theresa Scott, TOWN SECRETARY**