

ORDINANCE NO. 2026-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 32 (PEDDLERS AND SOLICITORS) OF THE TOMBALL CODE OF ORDINANCES TO COMPLY WITH STATE PREEMPTION OF LOCAL MOBILE FOOD VENDOR REGULATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Tomball, Texas (the "City") is a home-rule municipality duly organized and operating under the laws of the State of Texas, including Article XI, Section 5 of the Texas Constitution and as such, is vested with the power of local self-government; and

WHEREAS, the 89th Texas Legislature enacted Senate Bill 1008 ("SB 1008"), effective September 1, 2025, which limits a municipality's authority to impose permits, licenses, fees, and sound regulations upon food service establishments, mobile food units, and related businesses, and which expanded civil enforcement remedies under Texas Civil Practice and Remedies Code Chapter 102A, authorizing individuals and trade associations to seek injunctive relief and attorneys' fees against municipalities for ordinances in conflict with state law governing food service regulation; and

WHEREAS, the 89th Texas Legislature enacted House Bill 2844 ("HB 2844"), effective July 1, 2026, which created Texas Health and Safety Code Chapter 437B ("Chapter 437B"), establishing a comprehensive statewide licensing and inspection program for mobile food vendors administered by the Texas Department of State Health Services ("DSHS"), and which expressly preempts any local authority from prohibiting or regulating mobile food vendors in a manner that conflicts with Chapter 437B; and

WHEREAS, the Texas Health and Human Services Commission (HHSC), on behalf of DSHS, has proposed implementing rules at 25 Texas Administrative Code Chapter 226 ("25 TAC Chapter 226"), filed with the Texas Secretary of State on February 3, 2026, establishing statewide MFV licensing requirements, application procedures, inspection categories, and fee structures, and reaffirming that a local authority may not adopt rules or enforce requirements that conflict with Chapter 437B; and

WHEREAS, HB 2844 and Chapter 437B expressly preserve a local authority's power to enforce fire codes, zoning codes, and lawful location restrictions, and this Ordinance is intended to preserve those lawful regulatory powers while bringing the City's Code into compliance with state law; and

WHEREAS, the City Council finds that the public health, safety, and welfare are best served by amending Chapter 32 to comply with applicable state law, to reduce the City's exposure to civil liability, and to establish a streamlined registration system for mobile food vendors that preserves the City's authority over zoning, fire safety, and waste disposal;

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

SECTION 1. FINDINGS AND RECITALS INCORPORATED.

The findings and recitals set forth in the preamble of this Ordinance are hereby incorporated into the body of this Ordinance as if fully set forth herein and are adopted as findings of the City Council.

SECTION 2. AMENDMENT OF SECTION 32-1 — Definitions.

Section 32-1 (Definitions) of Chapter 32 of the Tomball Code of Ordinances is hereby amended by deleting the definitions of *Mobile* and *Mobile food vendor* in their entirety.

SECTION 3. AMENDMENT OF SECTION 32-2 — Exceptions to chapter.

Section 32-2 (Exceptions to chapter) of Chapter 32 of the Tomball Code of Ordinances is hereby amended by repealing subsection (6) in its entirety.

SECTION 4. AMENDMENT OF SECTION 32-11 — MOBILE FOOD VENDORS.

Section 32-11 (Mobile food vendors) of Chapter 32 of the Tomball Code of Ordinances is hereby repealed in its entirety and now reads as follows:

“Section. 32-11. – Mobile food vendors.

Upon request from the City, any mobile food vendor, as defined in Section 437B.001 of the Texas Health and Safety Code, within the city limits must present a valid state-issued mobile food vendor license indicating their legal ability to operate as a mobile food vendor.”

SECTION 5. AMENDMENT OF SECTION 32-49 — APPROVAL, DENIAL, ISSUANCE, AND APPEAL.

Section 32-49 (Approval, Denial, Issuance, and Appeal) of Chapter 32 of the Tomball Code of Ordinances is hereby amended by repealing the current subsection (b) in its entirety and renumbering subsections (c) and (d) as (b) and (c), respectively.

SECTION 6. SAVINGS CLAUSE.

Except as amended or repealed by this Ordinance, all provisions of Chapter 32 of the Tomball Code of Ordinances shall remain in full force and effect. All rights, duties, and obligations arising under prior ordinances, permits, or registrations issued pursuant to Chapter 32 prior to the effective date of this Ordinance, and all pending enforcement proceedings thereunder, shall be governed by the ordinances in effect at the time such rights, duties, obligations, or proceedings arose, except that no enforcement action shall be taken under any provision repealed or made inapplicable to mobile food vendors by this Ordinance.

SECTION 7. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the final judgment of any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the

remaining portions of this Ordinance, it being the intent of the City Council that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 8. EFFECTIVE DATE.

This Ordinance shall take effect July 1, 2026, the effective date of House Bill 2844, 89th Legislature, Regular Session, 2025.

PASSED AND APPROVED by the City Council of the City of Tomball, Texas, on this _____ day of _____, 2026.

Lori Klein Quinn, Mayor
City of Tomball, Texas

ATTEST:

City Secretary
City of Tomball, Texas

Date of first reading: _____

Date of second reading/adoption: _____