

**TOWN OF HARPSWELL**  
**MOBILE FOOD HANDLERS ORDINANCE**

Adopted June 12, 2012

## TOWN OF HARPSWELL MOBILE FOOD HANDLERS ORDINANCE

### **Section 1. Title.**

This Ordinance shall be known and may be cited as the “Town of Harpswell Mobile Food Handlers Ordinance.”

### **Section 2. Purpose.**

The purpose of this Ordinance is to regulate those establishments that operate as mobile food handlers in the Town of Harpswell. The regulations are essential to ensure that these establishments are selling food products in compliance with the Maine Food Code and are operating in appropriate locations within the Town.

### **Section 3. Authority.**

This Ordinance is adopted pursuant to 30-A M.R.S.A. § 3001, as may be amended from time to time.

### **Section 4. Definitions.**

As used in this Ordinance, the following terms shall have the meanings ascribed to them in this Section.

*Food Code* shall mean the State of Maine Food Code 2001 adopted by the Maine Department of Human Services and the Maine Department of Agriculture, Food and Rural Resources, as may be amended from time to time.

*Food products* means a raw, cooked or processed edible substance, ice, non-alcoholic beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

*Menu board* shall mean a surface on which food products for sale are listed.

*Mobile food handler* shall mean any person selling, or offering for sale, food products within the Town from a mobile unit, and where delivery is made at the time of sale.

*Mobile unit* shall mean a mobile, temporary or non-permanent vending unit that is capable of being moved from place to place.

*Nonprofit corporation or organization* shall mean a corporation or organization whose income or profit generated thereby is not distributable to its members, directors or officers.

*Operator* shall mean the person operating as a mobile food handler.

*Person* shall mean any individual, partnership, limited liability company, corporation, governmental entity, other legal entity, association, or public or private organization of any character.

*Town* shall mean the Town of Harpswell.

### **Section 5. License Required.**

A person shall not operate as a mobile food handler in the Town without first obtaining a license to do so from the Board of Selectmen; provided, however, that this Ordinance does not apply to the following: (a) nonprofit corporations or organizations that are exempt from obtaining a State of Maine eating establishment license under 12 M.R.S.A. § 2501, as may be amended from time to time, and that do not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of highways or public roads as determined by the Code Enforcement Officer; (b) any person who holds a valid site plan approval issued by the Planning Board; and (c) mobile food vendors located at Mitchell Field, who shall be reviewed and approved under Mitchell Field use policies instead of this Ordinance. A license may only be granted upon a showing by the applicant of compliance with all requirements of this Ordinance.

### **Section 6. Application Process.**

- (a) Authorized Applicants and Required Information. Applications for licenses under this Ordinance must be made by the person who will operate as a mobile food handler. The applicant shall file with the Town Planner an application in writing on a form to be furnished by the Town Planner, which shall include the following information:
- (i) Name of the applicant and mobile unit owner, including the names of the principals of any limited liability company or corporate applicant.
  - (ii) Address – local and legal address for receipt of notices. In the event of a change of either address prior to action on the application, the applicant shall notify the Town Planner so that the application may be revised.
  - (iii) Phone numbers – home and cell phone numbers as well as emergency phone numbers. In the event of a change of any phone number prior to action on the application, the applicant shall notify the Town Planner so that the application may be revised.
  - (iv) Name, address and telephone numbers (home, cell and emergency) of the operator, if operator is different from the applicant.
  - (v) A brief description of the food products to be sold.
  - (vi) A statement as to whether the applicant has been convicted of any crime, misdemeanor, or violation of any municipal ordinance, the nature of the offense, the punishment or penalty assessed therefore, and the date of occurrence.
  - (vii) Hours and dates of proposed mobile food handler operations.

- (viii) A sketch or photograph of the mobile unit with its measurements and all associated parts listed.
  - (ix) A sketch plan showing the proposed location(s) of operation of the mobile unit and parking spaces as required herein, including the relationship of the same to all site features in the immediate area.
  - (x) A copy of the written agreement or other instrument under which the land and parking space(s) for the mobile unit and customers will be available to the applicant.
  - (xi) A copy of any State permit that may be required, including a valid license issued by the State of Maine Department of Health and Human Services for food service. Mobile food handlers may operate only while such a valid license is in effect.
  - (xii) A copy of the required certificate of insurance.
- (b) Fees. The following non-refundable fees shall be as established from time to time by Board of Selectmen order:
- (i) Application processing fee, which shall accompany each application.
  - (ii) License for a season fee. The season shall run from May 1st to October 31st. The license fee shall be paid by the time the license is issued.
  - (iii) License for one day fee. The license fee shall be paid by the time the license is issued.
  - (iv) License for an event fee. An event license shall be valid for no more than seven (7) consecutive days. The license fee shall be paid by the time the license is issued.
- (c) When to File Applications. Applicants shall file completed applications with the Town Planner and should allow at least fourteen (14) business days for review and investigation prior to action by the Board of Selectmen. No application shall be deemed complete and ready for Board of Selectmen action until the applicant has paid the application processing fee.

**Section 7. Investigation of the Applicant.**

Upon receipt of each completed application for a mobile food handler license, the following shall occur:

- (a) The Code Enforcement Officer, or his designee, shall verify that the proposed location(s) comply with all applicable land use and parking ordinances of the Town and shall report such findings in writing to the Town Planner; and
- (b) The Town Planner shall review the application and other documents and determine whether such documents comply with all of the requirements of this Ordinance and shall report such findings in writing to the Board of Selectmen.

**Section 8. Prerequisites to Issuance of a License.**

Prior to the issuance of any license under this Ordinance, the applicant shall demonstrate compliance with the requirements set forth herein. If a license is granted by the Board of

Selectmen, continued compliance with these requirements shall constitute a condition of the license.

- (a) Insurance. The applicant shall obtain and maintain in full force and effect a policy of comprehensive general liability insurance with limits of not less than \$400,000, naming the Town as additional insured. The certificate of insurance shall provide no less than a ten (10) day notice to the Town prior to cancellation of insurance.
- (b) Location. The mobile unit shall not be operated in a way that will restrict or interfere with access to and from any building, abutting parcel or public place. No mobile unit may remain on a public road overnight.
- (c) Traffic safety. The proposed location(s) of operation of the mobile unit shall not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of highways or public roads.
- (d) Parking. There shall be at least one parking space for the mobile unit while it is being used to sell, or offer for sale, food products. The applicant shall provide evidence, by written agreement or other legal instrument, of control and possession of the parking space while the mobile unit is being used to sell, or offer for sale, food products. Adequate customer parking shall be provided, which shall be located outside of the traveled way of any road.
- (e) Utilities. All utility connections shall be secure and safe.
- (f) Waste. The mobile food handler's operations area shall be kept clean and free of litter. At least one recycling receptacle and one trash receptacle shall be provided for customer use.
- (g) Mobile Unit Design. The mobile unit design shall conform to the following:
  - (i) Materials: All mobile units shall be made of durable materials.
  - (ii) Size: Maximum size of a mobile unit shall be 150 square feet.
  - (iii) A trailer hitch shall be visually identified for safety purposes with a wrapper, bicycle type flag or other similar identifying device which does not obstruct the clear area.
  - (iv) Items used in association with the mobile unit, including, without limitation, any generator, propane tank, cooler, table or chair, shall be located within, or immediately adjacent to, the mobile unit.
- (h) Signage. Any signage shall conform to the following:
  - (i) No more than two (2) display signs, excluding lettering on an umbrella or awning, are permitted on each mobile unit. In addition, one menu board is permitted and shall be no larger than six (6) square feet. A menu board is not considered a sign.
  - (ii) The maximum size of each display sign shall be four (4) square feet.
  - (iii) Each sign face shall be counted as one sign.
  - (iv) Permanent signs are prohibited.
  - (v) Flashing, rotating, animated or changing lighting or signage is prohibited.
- (i) Lighting. Lighting shall not create undue hazards to motorists, shall be adequate for the operators of the mobile unit, and shall not result in undue light shining on

- nearby properties.
- (j) Generators. The use of a generator may be allowed only with the advance approval of the Board of Selectmen.
  - (l) Prohibitions. The applicant shall comply with the following:
    - (i) No animals shall be attached to the mobile unit except for guide animals.
    - (ii) No amplified sound shall be allowed, and no licensee shall make noise so loud as to distract passing motorists.
    - (iii) No open flame or heating unit in association with a mobile unit shall be available for non-licensee use.
    - (iv) No seating area for customers shall be allowed unless Planning Board site plan review and approval is obtained, in which case the exemption from licensure under Section 5(b) of this Ordinance applies.

### **Section 9. License Issuance.**

The Board of Selectmen may grant a license for a season, a single day or a single event as described in Section 6(b) above. After a license has been granted by the Board of Selectmen, the Town Planner shall issue the necessary paperwork to the licensee. Issued licenses shall contain the name and address of the licensee, the date of issuance, the length of time the license shall be operative (*i.e.*, the date of expiration), the approved location(s) of operation of the mobile unit and associated parking, and an identifying description of any vehicle used in such mobile food handling. The Town Planner shall keep a record of all licenses issued for the prior five (5) years.

### **Section 10. Standards for Denial, Suspension or Revocation.**

In addition to any other specific provision of this Ordinance authorizing action, a license may be denied, suspended or revoked by the Board of Selectmen upon a determination of the existence of one or more of the following grounds:

- (a) There has been a failure to fully complete the application forms or to pay any fee required hereunder; an incorrect statement of material fact has been made knowingly on such form; or there has been a knowing omission of material fact or additional documentation required or reasonably necessary to determine whether such license should be issued;
- (b) Failure to notify the Town Planner of any change of material fact set forth in the license application;
- (c) The applicant's or the licensee's business or professional conduct hereunder has been the source of one or more complaints of record that have been found to be valid and the conduct relates directly to the public health, safety or welfare;
- (d) The applicant/licensee has violated one or more provisions of this Ordinance or other Town ordinances, including, without limitation, the Town's land use and licensing ordinances;
- (e) The licensee has violated any provision of this Ordinance in the course of the conduct of the activity for which the license has been applied for, or has been issued;

- (f) The licensee has violated any condition of the license as set forth in Section 8 above in the course of the conduct of the activity for which the license has been issued; or
- (g) The occurrence of any event subsequent to issuance of the license which event would have been a basis for denial of the license shall be grounds for revocation thereof.

**Section 11. Emergency Contact Information Required.**

All license holders shall provide emergency contact information to the Town Planner upon issuance of the license on a form provided by the Town.

**Section 12. Posting of License.**

Licenses must be posted in a conspicuous place on the mobile unit.

**Section 13. Transferability of License.**

No licenses shall be transferred.

**Section 14. Enforcement; Violations.**

This Ordinance shall be enforced by the Code Enforcement Officer, for whom the Town's duly authorized law enforcement provider shall provide investigative and enforcement assistance. In addition to any action that may be taken by the Board of Selectmen with respect to the suspension or revocation of a license, violation of this Ordinance shall be a civil violation subject to a fine. The fine for a violation of this Ordinance shall be not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense. Each act of violation and every day that any such violation shall occur shall constitute a separate offense. In addition to the fines provided herein, the Town may enjoin or abate any violation of this Ordinance by appropriate action.

**Section 15. Severability.**

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

**Section 16. Conflicts with Other Ordinances.**

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control.

**Section 17. Amendments.**

Amendments to this Ordinance may be made by a majority vote of the Town at any Harpswell Town Meeting and shall take effect upon enactment unless otherwise specified.

**Section 18. Effective Date.**

This Ordinance shall become effective upon its adoption.