

LEMOYNE BOROUGH

Cumberland County, Pennsylvania

ORDINANCE NO. 761

AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF LEMOYNE, CUMBERLAND COUNTY, PENNSYLVANIA, AMENDING CHAPTER 358 OF THE CODE OF THE BOROUGH OF LEMOYNE REGARDING PEDDLING AND SOLICITING BY ADDING A NEW SECTION PROVIDING FOR THE REGULATION OF MOBILE FOOD VENDORS

BE IT ENACTED AND ORDAINED by the Borough Council of the Borough of Lemoyne, Cumberland County, Pennsylvania, as follows:

The Borough finds that allowing mobile food vendors to operate, subject to practical regulations and limitations, is beneficial to persons living and working within the Borough. This article recognizes the unique physical and operational characteristics of mobile food vending, establishes standards for mobile food vending operations and promotes practices that serve the health, safety and welfare of the public.

SECTION 1—DEFINITIONS

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

CANTEEN TRUCK: a vehicle that operates to provide food services to workers at locations where access to such services is otherwise unavailable or impractical (e.g., a construction site); from which the operator sells food and beverages that require no on-site preparation or assembly other than the heating of precooked foods; and is not advertised in any form to the general public except by virtue of signage on the vehicle. Products sold from canteen trucks may include fruits, vegetables, pre-cooked foods such as hot dogs, prepackaged foods and pre-packaged drinks.

COMMISSARY: an establishment or facility in a fixed location that is used for the storage of supplies for a mobile food service vehicle, the preparation of food to be sold or served at a mobile food service vehicle, or the cleaning or servicing of a mobile food service vehicle or the equipment used in conjunction with a mobile food service vehicle.

EDIBLE FOOD PRODUCTS: Those products that are ready for immediate consumption, including prepackaged food and food cooked, prepared or assembled on-site. The term "edible food products" does not include fresh produce unless the produce has been packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption.

FOOD TRUCK: A vehicle from which edible food products are cooked, prepared or assembled with the intent to sell such items to the general public, provided further that food trucks may also sell other edible food products and beverages that have been prepared or assembled elsewhere. Food truck operators may market their products to the public via advertising, including social media.

LOCATION: Any single property parcel or any combination of contiguous parcels that are owned or controlled by a single entity or affiliated entities.

MOBILE FOOD VENDOR: self-contained food service operation, located in a readily movable motorized, wheeled, or towed vehicle, used to store, prepare, display or serve food intended for individual portion service.

MOBILE FOOD VENDOR EVENT: a coordinated and advertised gathering of more than three (3) mobile food service vehicles in one location on a certain date with the intent to serve the public.

MOBILE FOOD SERVICE VEHICLE: a food truck or canteen truck and includes any portable unit that is attached to a motorized vehicle and intended for use in the operation of a food truck, canteen truck or ice cream truck.

MOBILE FOOD VENDOR LICENSE: a license issued by the Municipality for the operation of a mobile food service vehicle.

OPERATE: to sell food, beverages, and other permitted items from a mobile food service vehicle.

OPERATOR: any person operating or permitted to operate a mobile food service vehicle.

VEHICLE: every device in, upon or by which any person or property may be transported or drawn upon a street, including devices moved by human power.

SECTION 2—LICENSES AND PERMITS REQUIRED

- (A) It shall be unlawful to operate a mobile food service vehicle/ to sell or offer for sale any food, service, or merchandise at any location within the Borough of Lemoyne unless a mobile food vendor license has been issued by the Borough of Lemoyne and in compliance with the other requirements of this article and state law.
- (B) Mobile food vendors must comply with all federal, state and local licensing, which includes registering for and obtaining a local business license, up-to-date records on health inspections, as well as any and all other permitting regulations and all business tax, sales tax and other tax requirements

SECTION 3—LOCATIONS AND HOURS OF OPERATION

- (A) Food trucks.
 - (1) Right-of-way/public property. Food trucks may not operate within the public right-of-way or on any Borough property except as may be specifically allowed by the Borough. When allowed in the public right-of-way, a food truck must be positioned so as to comply with the requirements of Section 4 herein. Operation of food trucks within Borough parks shall be subject to rules and regulations established by council. No unattended food truck shall be left at any time in the right-of-way or parked on any other public property overnight.

(2) Private property. A food truck with a current mobile food vendor permit may operate on private property if allowed as a permitted use under Chapter 550 (Zoning) of this Code, subject to the following conditions:

- a. Permission. Food trucks selling to the public from private property shall have the written permission of the property owner, which shall be made available to the Borough immediately upon request.
- b. Unimproved properties. Regardless of any agreement with the owner of the property, a food truck may not operate on an unimproved parcel. For purposes of this section, a parcel is considered "improved" if it contains a building that may be occupied pursuant to applicable building codes.
- c. Maximum number of food trucks. No more than three (3) food trucks may operate at any location at one time unless authorized by the Borough.
- d. Placement on lot. Food truck operations, including any canopies, signage, equipment, and seating areas, may not occupy more than four parking spaces per food truck. Food trucks not parked within designated parking spaces shall not block fire lanes, designated traffic lanes or ingress or egress to or from a building or street.

(3) Hours of operation. Food trucks may operate beginning at 7:00 a.m. and ending at 9:00 p.m. unless otherwise restricted by the operator's mobile food vendor permit or by the property owner. The Borough may permit extended hours of operation.

(B) Canteen trucks.

(1) Right-of-way/public property. A canteen truck with a current mobile food vendor permit may operate from the right-of-way adjacent to a clearly delineated location to cater to on-site workers. A clearly delineated location is one in which the boundaries are defined by the use of fencing enclosing the location or where the surrounding area is undergoing construction activity. Canteen trucks may not operate within any other public right-of-way or on any Borough property except as may be specifically allowed by the Borough. When allowed in the public right-of-way, a canteen truck must be positioned so as to comply with the requirements of section 4 herein. Operation of canteen trucks within Borough parks shall be subject to rules and regulations established by the council. No unattended canteen truck shall be left at any time in the right-of-way or parked on any other public property overnight.

(2) Private property. A canteen truck with a current mobile food vendor permit may operate on private property if allowed as a permitted use under Chapter 550 (Zoning) of this Code, subject to the following conditions:

- a. Permission. Canteen trucks operating on private property shall have the written permission of the property owner, which shall be made available to the Municipality immediately upon request.
- b. Unimproved properties. A canteen truck may operate on an unimproved parcel only if the parcel or an adjoining parcel is undergoing construction activity.
- c. Placement on lot. Canteen trucks shall not block fire lanes, designated traffic lanes or ingress or egress to or from a building or street.

(3) Hours of operation. Canteen trucks may operate beginning at 7:00 a.m. and ending at 6:00 p.m. unless otherwise restricted by the operator's mobile food vendor permit. Extended hours may be authorized by the Borough upon request. A canteen truck shall not remain in the public right-of-way for more than one hour during a day.

SECTION 4—OPERATING REQUIREMENTS

(A) Vehicle requirements.

- (1) Design and construction. Mobile food service vehicles must be specifically designed and constructed for the purpose of preparation and sale of the specific type of food being sold and may not operate in any manner that is not compatible with the purpose for which the vehicle has been designed and constructed.
- (2) Licensing. Mobile food service vehicles must be licensed and equipped in accordance with the rules and regulations of all local, state and federal agencies having jurisdiction over such vehicles. The preparation and sale of food from mobile food service vehicles must comply with all applicable local, state and federal laws and regulations.

(B) Operating in the Right-of-way.

- (1) Mobile food service vehicles shall park facing the same direction as traffic, at a distance of no more than 12 inches between the curb face or edge of pavement and with the service window of the vehicle facing the curb or edge of pavement.
- (2) When a mobile food service vehicle is allowed to operate in the public right-of-way, no seating area shall be provided, except as permitted in conjunction with a street closure for a special event.

(C) Business access. No mobile food service vehicle may operate in a location that:

- (1) Impedes the ingress to or egress from another business or otherwise causes undue interference with access to another business;
- (2) Blocks the lawfully placed signage of another business; or
- (3) Prevents access to another business by emergency vehicles.

(D) Pedestrians. If on or adjacent to a sidewalk, the components of a mobile food service vehicle operations, including signage, seating areas and patron queue may not reduce the clear pedestrian path of travel on the sidewalk to less than six feet. All awnings or canopies of the vehicle shall be at least six feet, eight inches above the sidewalk.

(E) Distance. A mobile food service vehicle must maintain a minimum distance of ten (10) feet between other mobile food service vehicles and may not operate within 100 feet of a brick and mortar eating establishments.

(F) Safety and fire prevention.

- (1) All cooking, heating and electrical equipment and all cooking practices must comply with applicable safety regulations, including applicable fire and electrical codes.
- (2) No power cord, cable or equipment shall be extended across any public street, sidewalk or other public property.
- (3) No cooking equipment other than a heating apparatus compliant with applicable safety regulations may be used in a canteen truck.
- (4) All mobile food service vehicles must be equipped with a 2A-10BC fire extinguisher that is inspected annually and certified as meeting National Fire Protection Association standards.
- (5) All mobile food service vehicles with a generator must provide a 3A-40BC fire extinguisher
- (6) All food service vehicles utilizing a deep fat fryer must provide a type K fire extinguisher in addition to the required extinguisher requirements set forth in this ordinance.

- (7) The maximum amount of LPG gas that can be stored/used is two (2) 100 pound tanks with LPG storage tanks only permitted to be stored/used on the exterior of the mobile food service vehicle; furthermore, all piping and fittings for the distribution and use of LPG gas must be UL or FM approved.
- (8) Any type of cooking inside the mobile food service vehicle that produces grease laden vapors is required to be protected with an NFPA 96 compliant fire suppression system.
- (9) All vendors must maintain a clearance of at least 10 feet away from buildings, structures, vehicles, and any combustible materials and must also maintain a clearance of at least 15 feet from a fire hydrant
- (10) Any engine-driven source of power must be separated from the public by barriers, such as physical guards, fencing, or enclosures
- (11) Any engine-driven power must comply with the following:
 - a. At least 10 feet in all directions from openings and air intakes
 - b. At least 10 feet from every means of egress
 - c. Directed away from all buildings
 - d. Directed away from all other cooking vehicles
- (G) Solid fuel safety (wood, charcoal)
 - (1) Fuel must not be stored above any heat producing appliance or vent
 - (2) Fuel must not be stored closer than 3ft to any cooking appliance
 - (3) Fuel must not be stored near any combustible liquids, ignition sources, chemicals, and food supplies and packaged goods
 - (4) Fuel must not be stored in the path of the ash removal or near removed ashes
 - (5) All Ash cinders, and other fire debris should be removed from the firebox at regular intervals and at least once a day
 - (6) Removed ashes, cinders, and other removed fire debris should be placed in a closed, metal container located at least 3ft from any cooking appliance
- (H) Noise. No sounds that are prohibited by Chapter 550 of the Lemoyne Borough Code may be produced by a mobile food service vehicle's operations.
- (I) Support methods. No mobile food service vehicle may use stakes, rods or any other method of support that must be drilled, driven or otherwise fixed into or onto asphalt, pavement, curbs, sidewalks or buildings.
- (J) Spills. To prevent discharges into waterways, drainage systems or public sewer systems, each food truck shall comply with all storm water regulations of the Municipality and all regulations regarding prohibited discharges to public sewers. In addition, each vehicle shall have a spill response plan to contain and remediate any discharge from the vehicle.
- (K) Waste collection. The area of a mobile food service vehicle operation must be kept neat and orderly at all times. Operation of a mobile food service vehicle in an area is deemed acceptance by the operator of the responsibility for cleanliness of the area surrounding the operations (not less than 50 feet from all parts of the vehicle) regardless of the occurrence or source of any waste in the area. During each period of operation at a location, the operator must provide proper trash receptacles for public use that are sufficient and suitable to contain all trash generated by the mobile food service vehicle. All trash receptacles must be emptied when full, and all waste must be removed prior to departure of a mobile food service vehicle from a location.

- (L) Pedestrian service only. Mobile food service vehicles shall serve pedestrians only. Drive through or drive-in service is prohibited.
- (M) Signage. Signage for each mobile food service vehicle shall be limited to signs on the exterior or interior of the vehicle and one sandwich board sign. All signs on the exterior of the vehicle shall be secured and shall not project more than six inches from the vehicle. One sandwich board sign may be placed outside the mobile food service vehicle, provided that the base of a sandwich board sign must be placed no further than two feet beyond the mobile food service vehicle. Sandwich board signs shall not exceed eight square feet per side or 48 inches in height and shall not obstruct or impede pedestrian or vehicular traffic.
- (N) Alcohol sales. Food trucks may not sell alcoholic beverages, except as may be specifically allowed by applicable state law and Borough ordinance. Canteen trucks are prohibited from selling alcoholic beverages at all times.
- (O) Insurance.
 - (1) Mobile food service vehicles must maintain all motor vehicle insurance coverage required by applicable state and federal laws and regulations
 - (2) Mobile food service vehicles operating on Borough property other than the right-of-way shall at all times maintain such further insurance coverage as may be required by the Borough Manager. In the event the required coverage is not properly maintained, permission to operate on Borough property will be immediately revoked.
- (P) Exterior cooking equipment. Any food preparation equipment outside of the mobile food service vehicle shall not obstruct vehicular or pedestrian traffic, and the use and operation of such equipment shall not create safety hazards for the public. Food shall not be served to customers directly from any outside food preparation equipment. Any smoker or other exterior equipment that generates heat shall be surrounded with at least three traffic safety cones.
- (Q) Commissary. A commissary, as defined in this article, shall not be located in any residential zoning district unless permitted as a home occupation in compliance with Chapter 550 of the Lemoyne Borough Code.

SECTION 5—OPERATION RESTRICTIONS

- (A) All Mobile Food Vendors are prohibited from:
 - (1) Any area where they will impede pedestrian traffic.
 - (2) Consuming alcoholic beverages while vending.
 - (3) Vending within 100 feet of a licensed concession stand in a Borough park when that stand is open for business, unless the Mobile Food Vendor is under contract with the Borough to be in that specific location.
 - (4) Vending in any Suburban Residential Zoning District.
 - (5) Within 100 feet of the primary entrance of a licensed restaurant during the hours the restaurant is open for business, unless the vendor is operating with the consent of the restaurant.
 - (6) Parking where traffic or parking laws or ordinances would be violated
 - (7) Parking in fire lanes, loading zones or other spaces with parking limitations.
 - (8) Placing chairs, tables, tents or other similar items in the right-of-way or on private property without authorization from the property owner.

- (9) Offering public seating within a mobile food truck or any other mobile vehicle.
- (10) No mobile food vendor will be permitted to vend their goods and/or services within the right-of-way of the following streets in Lemoyne:
 - a. Third Street
 - b. Twelfth Street
 - c. Market Street from Third to Ninth Street

SECTION 6—MOBILE FOOD VENDER PERMITS

- (A) Required. The Codes Officer shall oversee the issuance, suspension and revocation of mobile food vendor permits. No mobile food service vehicle may operate within the Borough without a mobile food vendor permit issued by the Borough. A mobile food vendor permit authorizes the holder only to engage in the vending of products from a mobile food service vehicle in compliance with this Code and as specified on the permit. The mobile food vendor permit must be prominently displayed when the mobile food service vehicle is in operation. This section shall not apply to contractual arrangements between a mobile food service vehicle operator and any individual, group or entity for pre-arranged catering at a specific location for a period of not more than four hours, provided that the mobile food service vehicle is not open to or serving the general public.
- (B) Application
 - (1) In order to obtain a mobile food vendor permit, a mobile food service vehicle operator must complete an application form provided by the Borough. The application shall include the following information:
 - a. Name and address of the owner of the vehicle.
 - b. Name and address of the operator of the vehicle.
 - c. Color photographs of the exterior (front, side, and back) of the vehicle in its final condition and with all markings under which it will operate.
 - d. A copy of the vehicle license and registration form reflecting the vehicle identification number (VIN) of the vehicle.
 - e. A copy of the state health department license or permit applicable to mobile food providers.
 - f. A copy of any alcoholic beverage licenses, if applicable.
 - g. A certificate of insurance coverage, including required motor vehicle insurance coverage.
 - h. A signed acknowledgement that the operator has read this article and will comply with all applicable requirements herein.
 - i. Any additional information required by the Borough.
 - (2) Submittal of an application for a mobile food vendor permit must be accompanied by payment of an application fee in the amount of \$100.00. Any mobile food service vehicle previously found to be operating within the Borough without a current permit shall also pay the application fee shall of \$100.00 for new vendors.
 - (3) Each mobile food vendor permit holder shall have an ongoing duty to provide the Borough with notice of any change to any of the information submitted with its permit application, within 10 days of the change, including current photographs of the mobile food service vehicle in the event of any change in the appearance of or signage on the vehicle.

- (C) Issuance. A mobile food vendor permit shall be issued upon verification that an application has been completed in accordance with the requirements of this section, except that no such permit will be issued to an operator whose permit is currently suspended or has been revoked within the preceding 12 months, or to any person who intends to operate the same mobile food service vehicle for which the operator's permit is currently suspended or has been revoked within the preceding 12 months. If the Codes Enforcement Officer denies the application, such denial shall be in writing and provided to the applicant within 15 days of receipt of the application.
- (D) Expiration. All mobile food vendor permits shall expire on December 31 of each year, or on such alternate date as may be set by the Codes Enforcement Officer. A mobile food vendor permit may be renewed 30 days in advance for the next 12-month period, provided that all applicable requirements are met and the permit is not currently suspended or has not been revoked within the preceding 12 months. The fee for renewal shall be the same as the application fee for a new mobile food vendor permit.
- (E) Transferability. A mobile food vendor permit may not be transferred except as part of the sale of a controlling interest in a business holding the permit or a sale of substantially all of the assets of a business holding the permit. The operator of the mobile food service vehicle shall notify the Borough within ten days of any such sale and shall update any information that has been changed since the submittal of the application for the mobile food vendor permit.
- (F) Temporary permit. If an operator of a mobile food service vehicle has not previously obtained a mobile food vendor permit and is found to be operating within the Borough, Borough staff may authorize the operator to continue operating for not more than two hours, provided that the operations must comply with the location and hours of operation requirements set forth in sections 3(A)(3) and 3(B)(3) herein. Thereafter, the operator shall not operate a mobile food service vehicle within the Borough without first paying the required application fee and obtaining a mobile food vendor permit as required by this section.
- (G) Enforcement.
- (1) Citation. Each of the following circumstances constitute a violation of this article, for which a citation of \$300 may be issued to the violator of this Ordinance by a Codes Enforcement Officer and/or police officer of the Borough:
- Operation of a mobile food service vehicle without a current, valid permit, provided further that each day and each separate location at which a mobile food service vehicle is operated without a current, valid permit shall be considered a separate violation.
 - Continuation of temporary mobile food service vehicle operations beyond the time period authorized by staff.
 - Holding a special event without a permit or failing to comply with the conditions of approval for a special event permit.
 - Failure to comply with any other provision of this article.
- (2) Responsibility for violations. The Borough's Codes Enforcement Officers and/or police officers may, at their discretion in consideration of the situation, cite any of the individuals or entities listed below for any violation of the provisions of this article:
- The operator of a mobile food service vehicle.
 - An employee working at a mobile food service vehicle.
 - The owner of the property on which a mobile food service vehicle is operated.

- d. The entity or organization hosting a special event, or the person in charge of the special event.
- (3) Suspension of permit. A mobile food vendor permit shall be suspended by the Codes Officer if:
 - a. The applicant for the permit knowingly provided false information on the application.
 - b. Two violations of this article have occurred within a six-month period in conjunction with the mobile food service vehicle for which the permit has been issued.
 - c. The operator of a mobile food service vehicle fails to maintain a current, valid vehicle registration, health department permit, business license or proof of required motor vehicle insurance coverage.
- (4) Revocation of permit. A mobile food vendor permit shall be revoked by the Codes Enforcement Officer if:
 - a. Four violations of this article have occurred within a 12-month period.
 - b. A mobile food service vehicle is operated in an unlawful manner so as to constitute a breach of the peace or otherwise threaten the health, safety or general welfare of the public.
- (5) Reinstatement.
 - a. Suspended permit. An operator may reinstate a suspended mobile food vendor permit by taking such actions as may be necessary to correct a mobile food service vehicle's noncompliance and paying a reinstatement fee of \$100.00 offset the Borough's cost of enforcement measures, inspections and compliance verifications.
 - b. Revoked permit. An operator whose mobile food vendor permit has been revoked may apply for a new permit after 12 months from the date of revocation, provided the operator has taken such actions as may be necessary to correct a mobile food service vehicle's noncompliance. The operator shall pay a permit reinstatement fee of \$100.00 to offset the Borough's cost of enforcement measures, inspections and compliance verifications.
- (H) Notice. Notice of the suspension or revocation of a mobile food vendor permit shall be issued to the operator in writing by the Codes Enforcement Officer.
- (I) Appeals.
 - (1) Filing. The denial, suspension or revocation of a mobile food vendor permit by the Codes Enforcement Officer may be appealed by filing a written notice of appeal, establishing the grounds for the appeal, with the Borough Manager no later than ten business days following receipt of the notice of denial, suspension or revocation.
 - (2) Borough Council's review. When an appeal is filed with the Borough Council as set forth herein, Borough Council may request such additional information from the operator and the Codes Enforcement Officer as may be deemed necessary. At Borough Council's discretion, the appeal may be decided based on the written information and documentation submitted, or a hearing may be scheduled with the operator and the Codes Enforcement Officer. Borough Council's decision shall be issued in writing, based on a written summation of the pertinent facts, and shall be final. Borough Council may reverse the denial, suspension or revocation of a permit, or may reduce the waiting period required for reinstatement of a revoked permit if it is determined that the operator has taken reasonable steps to mitigate the violations leading to the revocation and to prevent future violations.
 - (3) Refunds. There shall be no refund of an application fee for a mobile food vendor permit that has been denied. There shall be no refund of a reinstatement fee for a suspended or revoked permit

unless the Borough Manager determines on appeal that the Codes Enforcement Officer acted in error in suspending or revoking the permit.

SECTION 7.

In case of conflict between this ordinance or any part hereof, and the whole or part of any existing ordinance of the Borough, the provision that establishes the higher standard shall prevail.

SECTION 8

If any section, subsection, clause, provision or portion of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, subsection, clause, provision or portion of this ordinance.

SECTION 9

This ordinance shall be effective upon its legal enactment.

DULY ENACTED AND ORDAINED this 18th day of June 2020, by Borough Council of the Borough of Lemoyne, Cumberland County, Pennsylvania, in lawful session assembled.

BOROUGH OF LEMOYNE

ATTEST: _____

Secretary

[BOROUGH SEAL]

BY: _____

Council President

APPROVED this 18th day of June 2020.

BY: _____

Mayor