

# ORDINANCE NO. 2021 - 188

## AN ORDINANCE OF THE TOWNSHIP OF KIDDER, CARBON COUNTY, PENNSYLVANIA AUTHORIZING MOBILE FOOD FACILITIES BY SETTING FORTH OPERATION STANDARDS, APPLICATION AND SELECTION CRITERION, LICENSE SUSPENSION AND REVOCATION FEES, APPEALS AND PENALTIES

**BE IT ENACTED AND ORDAINED** by the Board of Supervisors of the Township of Kidder that the Code of the Township of Kidder should be amended to add the following article regarding Mobile Food Facilities;

### **SECTION 1: Intent and Purpose**

The Township of Kidder wishes to regulate, control and otherwise inspect entities known as Mobile Food Facilities within the Township for the purpose of ensuring the public health, safety and welfare of the residents of Kidder Township and the people patronizing Mobile Food Facilities.

### **SECTION 2: Definitions**

For the purposes of this article, certain terms shall be defined as follows:

**Designated Officer(s)** – Any person or persons designated by the Township Board of Supervisors including but not limited to Police, Code Enforcement, Zoning Officer and Building Inspector for purposes of enforcement of this article shall have the responsibility and authority to administer and enforce all provisions of this article.

**Food Products.** Includes and shall be limited to such foods intended for immediate consumption and sold from Mobile Food Facilities which shall not include tobacco, alcoholic products and fireworks.

**Mobile Food Facility (Also known as MFF)** A movable retail food facility, such as stand, vehicle or cart from which food is stored, prepared, processed, distributed or sold.

**Mobile Food Facility Vendor.** A person selling or offering for sale food products or natural products from a Mobile Food Facility.

### **SECTION 3: Mobile Food Facility (MFF) License**

- A. **License required.** No person shall sell or offer for sale any food products on any MFF in the Township unless holding a MFF License.
- B. **License Term and Fees.** MFF License shall be issued for the calendar year in which it is issued, ending December 31<sup>st</sup>, renewable upon payment of license fee, to be established by resolution of Board of Supervisors. The permit fee shall not be prorated or refundable for the calendar year in which it is issued.
- C. **License Non-transferable.** MFF when issued shall not be transferable.

### **SECTION 4: Mobile Food Facility License Application**

- A. The application for a MFF License shall include but not limited to the following information:

- (1) Name of Applicant and contact information.
- (2) Legal name of business or entity.
- (3) EIN Number.
- (4) Written permission from the landowner or landowners if more than one location will be utilized.
- (5) Name, phone number, and driver license number of the owner of the Mobile Food Facility.
- (6) Contact name and phone number for the Mobile Food Facility while in operation.
- (7) Description of products being sold from the Mobile Food Facility.
- (8) Vehicle identification number, license plate number and state, and copy of insurance and vehicle registration.
- (9) Make, Model and Year of Mobile Vehicle used to operate the Mobile Food Facility.
- (10) Plot plan showing the location of the Mobile Food Facility when parked or located on land, including setbacks from the Mobile Food Facility to the property lines (front, side and rear) and the location and number of designated parking spaces for the Mobile Food Facility. A separate plot plan shall be required if more than one location will be utilized.
- (11) A copy of the license issued to the Mobile Food Facility by the Pennsylvania Department of Agriculture.
- (12) Information on disposal of wastewater, disposal consistent with the following:
  - (a) All greywater (sink and wash water) generated by the Mobile Food Facility operation would need to be discharged into a portable holding tank mounted onto the mobile food truck.
  - (b) Waste water from a Mobile Food Facility shall not be drained onto the ground or any public or private roadway, or be deposited into any storm or sewer drain outlet. The contents of the holding tank must be disposed of at a DEP approved site (e.g., DEP approved wastewater treatment facility, DEP approved campground).
- (13) Such information as the applicant may choose or may be requested by the Township.

B. Review of Applications. The Township Code Enforcement Officer or designated agent shall complete the review of all applications filed and notify the applicants of the results thereof, in writing, within 30 days of receiving a complete application.

- (1) An application shall be denied and the applicant ineligible to receive a Mobile Food Facility License if the application is incomplete in any material respect.
- (2) If an application is denied, the applicant shall be notified, in writing of the reason therefore.

## **SECTION 5: Mobile Food Facility (MFF) Standards and Regulations**

- A. **Maintenance.** All Mobile Food Facilities shall at all times be maintained in good condition and repair. No replacement MFF may be placed into operation until approved by the Township Code Enforcement Officer or designated agent.
- B. **Sidewalks and Parking Lots.** All sales activities, shall be conducted totally from the MFF. A MFF is prohibited from using any sidewalks and streets as a location for product display. Trash receptacles shall be placed in such a manner as not to impede a pedestrian or public right-of-way (such as sidewalks) and vehicular traffic in parking lots.
- C. **Signs.** No signage is allowed except signage affixed to the Mobile Food Facility identifying the vendor, menu and pricing information.
- D. **Lighting.** Exterior lighting shall be aimed, located, designed, fitted and maintained so as not to present a hazard to drivers or pedestrians by impairing their ability to safely traverse and so as not to create a nuisance by projecting or reflecting objectionable light onto a neighboring use or property. See Code of Kidder Township Chapter 180-67.
- E. **Days and Hours of Operation.** MFF sales may be conducted daily from 7:00 a.m. to 11:00 p.m.
- F. **Daily Removal.** Mobile Food Facility may remain on site no longer than a maximum of one hundred and eighty (180) consecutive calendar days unless operations cease within the time frame.
- G. **Quiet Operations.** Mobile Food Facilities shall conduct business in an orderly fashion and shall not make loud or raucous noises or use sound-amplifying devices to attract attention nor verbally hawk or solicit product sales to pedestrians or motorists.
- H. **Vehicle.** MFF shall not be in violation of the Pennsylvania Vehicle Code.

## **SECTION 6: Mobile Food Facility (MFF) Vending Areas.**

A Mobile Food Facility may only be located on a lot containing a principal building or use. Such locations shall be situated within (C) Commercial, (VC) Village Commercial, (R/RC) Recreation/Resort and (BD/LI) Business/Light Industrial Zoning Areas.

- A. Maximum of one (1) MFF on lots of one acre or less; (NOTE: "Special Events" are exempt, see section 9).
- B. Maximum of two (2) MFF on lots over one acre; (NOTE: "Special Events" are exempt, see section 9).
- C. No Mobile Food Facility shall hereafter sell or offer for sale any food or nonfood products and services in a manner that would substantially obstruct a public right-of-way, impair the movement of pedestrians or vehicles, or pose a hazard to public safety. No tables or chairs for public use shall be permitted.
- D. All Mobile Food Facilities shall position themselves at least 50 feet from another MFF and shall locate the MFF in such a way as to cause any line which forms to do so in a spot which does not endanger the people in line or impede pedestrian or vehicular traffic.

- E. A Mobile Food Facility may not sell or offer for sale any products:
- (1) Within 15 feet of an entrance to any property;
  - (2) Within 25 feet of a fire hydrant;
  - (3) From any vehicle or ancillary equipment not approved and inspected by the Township Code Enforcement Officer or any designee thereof;
  - (4) On private property without written approval of the property owner responsible for the maintenance of the area and/or right-of-way area to be obstructed;
  - (5) Three hundred feet from a brick-and-mortar restaurant or business with a valid health license issued by the Pennsylvania Department of Agriculture unless written permission from those property and/or business owner(s) is received.

**SECTION 7. Suspension or Revocation of Mobile Food Facility (MFF) License**

- A. **Grounds.** A Mobile Food Facility License shall be subject to suspension or revocation by the Township Code Enforcement officer or designated agent for any of the following causes:
- (1) The violation of any provision of this article, the regulations promulgated hereunder or the orders of the Township Code Enforcement Officer or designated agent issued pursuant thereto;
  - (2) Where the license holder has knowingly made a false, misleading or fraudulent statement of material fact in the application for a license;
  - (4) When the MFF vendor violates the provisions of or fails to maintain any license or permit required by any applicable state health codes.
  - (5) The practice of fraud, deceit, misrepresentation or furnishing false information in the course of carrying on the licensed business.
- B. **Procedure, Notice and Hearing;**
- (1) Prior to the suspension or revocation of a MFF license becoming effective, the Township Code Enforcement Officer or designated agent shall notify the licensee, in writing, of the suspension or revocation, the reasons therefore, his right to a hearing before the Board of Supervisors if desired and that unless a request for a hearing is filed in writing within 30 days of the date of the notice of suspension or revocation the suspension or revocation shall then become effective without further action. Such notice shall be served upon the licensee by delivering the same personally or by registered mail, postage fully prepaid, addressed to the licensee at his or her place of business or residence as shown on the license application.
  - (2) If a hearing is requested it shall be conducted by the Board of Supervisors within 60 days of the request. If following the hearing the suspension or revocation is upheld, the reasons therefore shall be set forth in writing and delivered to the licensee by ordinary mail. A decision upholding or sustaining the suspension or revocation shall result in such suspension or

revocation becoming effective and not subject to further stay except upon order of a court of common pleas.

- (3) **Appeals to the Court of Common Pleas.** Any person aggrieved by any Decision of the Board of Supervisors may Appeal to the County Court of Common Pleas of Carbon County within thirty (30) days of the mailing of the Decision to the Appellant.

#### **SECTION 8: Appeals to Denied Application**

- A. **Appeals** of a determination of the Designated Officer under this Chapter to deny any application shall be filed with the Kidder Township Board of Supervisors within thirty (30) days of the date of the denial of application or revocation of permit. Appeal shall be processed as follows:
  - (1) All appeals shall be in writing and signed by the Appellant and shall be accompanied by a fee, the amount of which shall be established by resolution of the Township Supervisors, which may include notice and advertising costs, and necessary administrative expenses in relation to the hearing.
  - (2) Each appeal shall fully set forth the determination appealed from, a detailed reason or basis for the appeal, and relief sought. Every appeal shall refer to the specific circumstances of the case.
- B. **Hearings;**

The Board of Supervisors shall conduct hearings and make decisions pursuant to the Act of December 2, 1968 (P.L. 1133, No. 353) known as the "Local Agency Law", and in accordance with the following requirements.

  - (1) Written notice shall be given to the Appellant, Zoning Officer and/or Code Enforcement Officer, and to any person who shall be given at such time and in such manner as shall be prescribed by rules of the Board of Supervisors, but not less than fifteen (15) days prior to the hearing.
  - (2) The hearing shall be held within sixty (60) days from the date the appeal is filed, unless the Appellant has agreed in writing to an extension of time.
  - (3) The hearings shall be conducted by the Board of Supervisors. The decision or, where no decision is called for, the findings shall be in writing by Board of Supervisors within forty-five (45) days after the conclusion of the hearing, unless the Appellant has agreed in writing to an extension of time, and shall be communicated to the Appellant and any other parties who have entered their written appearance and requested a copy of the decisions, at the address provided by them either by personal delivery, or by both United States First Class and certified mail.
  - (4) The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.

- (5) Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.
- (6) The Board of Supervisors may, but is not required to, make a stenographic record of the proceedings. In the event a stenographic record of the proceedings is not provided by the Board of Supervisors, a stenographic record shall be made and kept at the request of any party agreeing to pay the costs thereof. Any party or other person desiring a copy of the stenographic record shall order the copy directly from the stenographer who prepared the same and shall pay the cost imposed by the stenographer for the copy directly to the stenographer.
- (7) The Board of Supervisors shall not communicate, directly or indirectly, with any party or any party's representatives in connection with any issue involved except upon notice and opportunity for all parties to participate; shall not take any notice of any communication, reports, staff memoranda, or other materials except advice from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed; and shall not inspect the site or its surroundings after the commencement of hearings with any party or any party's representative unless all parties are given the opportunity to be present.

#### **SECTION 9. Special Events; Zoning Exemption**

The operation of a Mobile Food Facility during special events, including but not limited to Township sponsored events or events where multiple Food Facilities would be gathered by a church, non-profit organization, or otherwise permitted under a Special Events Permit issued by the Township Zoning Officer shall be exempt from this Chapter. (See additional Chapter 180-23; §H(5))

#### **SECTION 10: Violations and Penalties**

Any person violating any provisions of this article, upon conviction thereof in a summary proceeding be sentenced to pay a fine of not less than \$100 nor more than \$600 for each and every offense, to be collected as other fines and costs are by law collectible, or shall be imprisoned for not more than 90 days, or both. Each day during which any person violates any provisions of this article shall constitute a separate offense.

**ENACTED and ORDAINED** this 19<sup>th</sup> day of August, 2021 by the Board of Supervisors of the Township of Kidder.

**KIDDER TOWNSHIP  
BOARD OF SUPERVISORS**

By: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
Secretary