

ORDINANCE 2018-25

Regulating Mobile Food Service Establishments

WHEREAS, the City of Hazleton desires to regulate, control, and otherwise inspect entities known and identified as Mobile Food Service Establishments within the municipality; and

WHEREAS, it is the intention and purpose of this Ordinance to ensure the safety of the citizens of the City of Hazleton and individuals who patronize Mobile Food Service Establishments.

NOW, THEREFORE, BE IT HEREBY ORDAINED AND ENACTED by the Council of the City of Hazleton, as follows:

SECTION 1 **DEFINITIONS**

- (A) *"Day" shall mean any consecutive twenty-four (24) hour period not constrained by a singular calendar day.*
- (B) *"Edible goods" shall include, but are not limited to:*
 - (1) *Prepackaged food, including, but not limited candy, beverages, and ice cream;*
 - (2) *Prepared food, including, but not limited to hot dogs, deserts, and pizza; and*
 - (3) *Onsite prepared food, including, but not limited to shaved ice, sandwiches, and tacos.*
- (C) *"Food Service Establishment" shall mean any business that sells edible goods and has been inspected and approved by the Department of Agriculture, including commercial kitchens and commissaries, and shall specifically exclude accessory or self-serve retail food sales.*
- (D) *"Mobile" shall mean the capability of being active, but not necessarily in continuous movement.*
- (E) *"Mobile food vendor" shall mean any business or person which sells edible goods from a non-permanent location within the City of Hazleton. This term includes, but is not limited to:*
 - (1) *Mobile food truck: a self-contained motorized unit selling items defined as edible goods;*

- (2) *Any motor vehicle used to sell items defined as edible goods;*
 - (3) *Concessions cart: a mobile vending unit that must be moved by non-motorized means;*

 - (4) *Any type of wagon, trailer, cart, sled or other equipment that must be moved by non-motorized means to include pulled or pushed by human or animals; and*

 - (5) *Concession trailer: a vending unit which is pulled by either a motorized unit or any other device, animal, or human, and has no power to move on its own.*
- (F) *“Non-refrigerated” shall mean edible goods that are not required to be kept at a temperature below forty-one (41°F) degrees Fahrenheit according to the Federal Food and Drug Administration and the Commonwealth of Pennsylvania’s food establishment rules.*
- (G) *“Sell” shall mean the act of exchanging a good for a payment, either for profit or in return for a donation.*
- (H) *“Stationary location” shall mean the position of the mobile food vendor when not in motion, and addressing the public for the purpose of sales.*

SECTION 2
LICENSES, PERMITS AND APPLICATIONS

- (A) **Business License:** *Every mobile food vendor shall have a business license issued by the City of Hazleton prior to obtaining a Mobile Food Vendor Permit. The application for a business license shall be in accordance with the current Business License Ordinance for the City of Hazleton.*

A one (1) day transient Permit may be obtained through the City for vendors who will not regularly operate in the City. This one (1) day transient Permit for mobile food vendors shall be one-hundred and twenty-five (\$125.00) dollars. This one (1) day Permit must be procured no less than two (2) weeks prior to the vendor’s planned operational date in the City.

- (B) **Mobile Food Vendor Permit:** *Every mobile food vendor shall have a permit issued by the City of Hazleton to conduct business in the City, and be subject to the mercantile and business privilege tax as per Hazleton City ORDINANCE 2017-24.*

- (C) ***Application:*** *An applicant shall apply for a permit no less than two (2) weeks prior to the vendor's anticipated date to begin operating in the City by filing the proper forms, which are available from the Hazleton City License and Permit Office.*

Applications shall be processed in the following manner:

- (1) *Applicant applies for a business license at the Hazleton City Licenses and Permits Office, and follows the procedures to obtain said business license.*
- (2) *The City will provide the list of rules and regulations contained in this Ordinance to the Applicant.*
- (3) *Once the business license process is completed, the applicant must submit to the Pennsylvania Department of Agriculture an application for inspection of apparatus.*
- (4) *The Pennsylvania Department of Agriculture inspects the apparatus to be used in the course of the Applicant's business.*
- (5) *The Pennsylvania Department of Agriculture issues Applicant a health license.*
- (6) *Applicant brings valid Pennsylvania Department of Agriculture health license and all apparatus, vehicles, and/or conveyances to be used to sell food, to the Hazleton City Licenses and Permits Office.*
- (7) *Applicant applies for a Hazleton City Mobile Food Vender Permit with the Licenses and Permits Office.*
- (8) *Code Enforcement and the Police Department shall inspect the apparatus, vehicles, and/or conveyances for things such as signage, audible signal level, such as bells or music, etc.*
- (9) *After the inspection is completed and all City business licenses and the Pennsylvania Department of Agriculture License are verified, the City shall again provide the list of rules and regulations contained in this Ordinance to the Applicant.*
- (10) *The Applicant shall sign a form stating he or she is in receipt and is responsible for operating within the guidelines of this Ordinance at **ALL TIMES**.*

- (11) *The signed form shall be attached to the Application and filed.*
 - (12) *Once all requirements of this Ordinance are completed and correct, a Mobile Food Vendor Permit shall be issued.*
- (D) **Permit Form:** *A complete application shall require the following information from the Applicant in order to be considered:*
- (1) *Name of Applicant.*
 - (2) *Legal name of business or entity.*
 - (3) *EIN Number.*
 - (4) *State of incorporation or filing of a partnership or articles of association.*
 - (5) *If applicable, a copy of the Chapter or Articles of Incorporation, and current listing of directors, partners, or principles. Publicly traded companies are exempted.*
 - (6) *Sales tax number with a copy of the sales tax permit.*
 - (7) *Signed permission from the private property owner, if any will be used.*
 - (8) *Name, phone number, and driver license number of business owner.*
 - (9) *Contact name and phone number for mobile food vending unit while in route.*
 - (10) *Description of products being sold out of mobile food vending unit.*
 - (11) *Description of attached signage.*
 - (12) *Vehicle identification number.*
 - (13) *Description of mobile food vending unit.*

SECTION 3 **LIABILITY AND INSURANCE OBLIGATION**

Every Mobile food vendor doing business in the City of Hazleton must furnish evidence of comprehensive public liability insurance coverage for not less than \$500,000/\$500,000 in the event of bodily injury, including death, and, if applicable, worker's compensation insurance. Such evidence shall be in the form of a certificate

with 10 days' cancellation notice, which shall be furnished to the City at the time the mobile food vender applies for his or her annual license. Failure to maintain the required insurance will be considered sufficient reason for the City to suspend the mobile food vender's license and shall be subject to fines and or penalties as defined herein.

SECTION 4 **PERMIT FEES AND REGULATION**

(A) Permit Fee

- (1) The application for a Mobile Food Vendor Permit shall be fifty (\$50.00) dollars. Each mobile food vendor unit shall be permitted separately.*
 - (a) Mobile Food Vendor permits shall be valid for one (1) year from January 1st until December 31st for each year, regardless of the specific date of issue.*
 - (b) At the time of renewal, the applicant must provide a new application payment of fifty (\$50.00) dollars, and proceed through the application and inspection process anew.*
 - (c) The Permit fee may be remitted by a third party contracting with the vendor to arrange their services.*

(B) Permit Denials

- (1) An Applicant has been convicted of a crime which directly relates to the duties and responsibilities of the licensed occupation, which shall be determined by the nature and seriousness of the crime, the relationship of the crime to the purpose of the permit, and the extent that the permit would allow someone to engage in further criminal activity; or*
- (2) The required information is incomplete, incorrect, or shows that a person is not otherwise entitled to conduct business as a mobile food vendor; or*
- (3) The opportunity to reissue a permit has been denied due to previous violations as described in this Section.*

(C) Display of Permit

Every permit, including those from the City of Hazleton, shall be displayed at all times in a conspicuous place where it can be read by the general public on the mobile food vendor truck, concession cart, or concession trailer.

(D) Permit Revocations or Suspension

- (1) A permit may be revoked upon conviction of any offense committed by an individual operating as a mobile food vendor in the City of Hazleton while engaged in the permitted business, or if a final conviction occurs or is found to have existed at the time of application, or if civil judgments as set forth above are placed or found of record against an Applicant. A permit may be suspended in the event of pending charges of a crime, as set forth above, upon a magistrate's determination of probable cause in connection with such charges.*
- (2) A permit may be revoked for nonconformity to the application location specifications or requirements, as well as to nonconformity to an approved location plan or diagram.*
- (3) Any employee working for an Applicant permitted as an employer under this Section may be denied the right to solicit under such permit, or such rights may be suspended or terminated under the same circumstances and procedures which apply to the holder of the permit. Revocation or suspension of an employer permit terminates all employee permits.*
- (4) A Permit may be suspended or revoked for not complying with the requirements of this Section or any other ordinances or laws.*

(E) Appeal of Permit Revocation Suspension or Denial

The notice of revocation, suspension or denial of a permit shall include the procedure for appealing the suspension, revocation or denial, as follows:

- (1) If a City official revokes, suspends or denies a Mobile Food Vendor Permit, the holder or Applicant of the Permit which has been revoked, suspended or denied shall have the right of appeal to the City of Hazleton Code Enforcement Office Director or Designee by submitting an appeal in writing to the Director or Designee within ten (10) business days of the revocation suspension or denial.*
- (2) Pending action on the appeal of a Permit which has been revoked or suspended shall be considered revoked or suspended.*

- (3) *If a written appeal is not submitted within ten (10) business days of revocation suspension or denial, or if the appeal is denied, the permit shall hence be considered revoked, suspended or denied.*

(F) *Reapplication after Revocation Suspension or Denial of Permit procedure*

If a Mobile Food Vendor or Applicant is not in compliance with this Section or any other ordinances, laws, or the approved vendor application, the following actions will be taken:

1st Violation – *A warning may be issued or the permit may be revoked or suspended and the vendor may become ineligible for new or reissued permit for a period of three (3) months.*

2nd Violation – *The Permit will be revoked and the vendor may become ineligible for a new or reissued permit for a period of six (6) months.*

3rd Violation – *The Permit will be revoked and the vendor will become ineligible for a new or reissued permit for a period of one (1) year.*

If an Applicant's Permit has been denied and the appeal is also denied, the Applicant may not reapply for a new permit for a period of six (6) months.

SECTION 5
ZONING AND LOCATION RESTRICTIONS

(A) *Distance Regulations*

- (1) *A mobile food vendor may not be located within one hundred (100) feet of the primary entrance of an open and operating fixed location food service establishment.*
- (2) *A mobile food vendor shall not conduct sales at a stationary location for a duration exceeding two (2) hours and cannot exceed more than eight (8) hours during any twenty-four (24) hour period.*
- (3) *A mobile food vendor shall not conduct sales at a stationary location within an R-1, R-2, R-3, or O-S zoning district for a duration exceeding ten (10) minutes per location per day.*
- (4) *A mobile food vendor shall move at least two hundred (200) feet (one city block) every ten (10) minutes when operating in an R-1, R-2, or O-S zoning district.*

- (5) *A mobile food vendor shall not conduct sales in congested areas where the operation impedes vehicular or pedestrian traffic.*
- (6) *A mobile food vendor shall not conduct sales between the hours of 10:00 pm and 7:00 am in an R-1, R-2, R-3, or O-S zoning district in compliance with the City of Hazleton's curfew.*
- (7) *A mobile food vendor shall not conduct sales between the hours of 3:00 am and 7:00 am in an O, CC, or CH zoning district.*
- (8) *A mobile food vendor shall not cause any congestion of traffic flow, and, if vehicular traffic or pedestrian flow becomes impeded, the vendor shall immediately and without delay vacate the area so as to allow for the free flow of traffic and relief of the congestion.*

(B) Location Regulations

- (1) *No Mobile Food Vendor shall locate on any private property without written permission from the property owner to do so, and must comply if asked to leave by the property owner.*
- (2) *Prior to the operation of any mobile food vendor on private property, a copy of the written permission to operate in a specific location signed by the private property owner, including a contact phone number for verification, shall be presented to the City Licenses and Permits Office. The Licenses and Permits Office shall verify the permission is valid and instruct the owner of the property that they are also responsible for the behavior of the vendor while the vendor is operating and/or located on their property.*
- (3) *A copy of the written permission to operate in a specific location signed by the private property owner, including a contact phone number for verification, shall be kept within the Mobile vending unit at all times.*
- (4) *No Mobile Food Vendor shall be allowed to operate in the public right-of-way in violation of this Ordinance or any regulations as stated in the Pennsylvania Vehicle Code.*
- (5) *When operating in the public right-of-way, the vehicle or conveyance shall face the correct direction of travel, and the vending window must face the sidewalk at all times.*
- (6) *Mobile Food Vendor business activity is to be temporary and the Mobile Food Vendor may not park at one location in the public right of way for*

more than two (2) hours and cannot exceed more than eight (8) hours during any twenty-four (24) hour period.

- (7) Only one (1) vehicle operating in the public right-of-way is allowed within the same block face at one time.*
- (8) All signs must be physically attached to the vehicle, and will be subject to any City of Hazleton sign permits.*
- (9) All stationary locations for a mobile food truck must comply with applicable Hazleton Zoning Ordinance and Zoning Map and Uniform Construction Code.*

SECTION 6
MOBILE FOOD VENDOR REQUIREMENTS

The following regulations shall apply to Mobile Food Vendors within any zoning district:

- (A) Each unit shall be equipped with a portable trash receptacle and shall be responsible for proper disposal of solid waste and waste water in the sanitation facility legally accessed by the food service establishment. All disturbed areas must be cleaned following each stop at a minimum of twenty (20) feet of the sales location. Waste water will not be allowed to drain on the ground or public roadway, or be deposited into any sewer drain outlet.*
- (B) Continuous music or repetitive sounds shall not project from the mobile unit while parked or stopped.*
- (C) A five (5) foot clear space will be maintained around the mobile food vending unit at all times.*
- (D) The mobile unit will be subject to inspection upon permit application through the Licenses and Permits Office, Police Department, and the Fire Department's Fire Inspector, and may be subject to random inspection, and upon reissuance of the permit.*
- (E) A no smoking sign must be posted next to the order window area.*
- (F) A tagged fire extinguisher with a 10 BC rating and a Class K fire extinguisher shall be kept accessible at all times as directed by the City of Hazleton's Fire Chief/Inspector or his designee.*

- (G) *An extinguishing vent hood as described in the ICCA 2006 International Fire Code shall be required when the cooking process produces grease laden particles within the mobile unit. Said hood shall be maintained and tested annually by an independent extinguisher company.*
- (H) *All compressed gas fuel cylinders shall be shielded and secured as indicated in the 2006 International Fire Code.*
- (I) *Proper electrical power shall be maintained and installed as per the International Electrical Code. Extension cords running from any residential living space for power will not be allowed. Generators must comply with **ORDINANCE 2013-8**, entitled “An Ordinance of the City of Hazleton, Luzerne County Pennsylvania Defining and Prohibiting Sound/Noise Disturbance and Providing Penalties for Violations.”*

SECTION 7
OFFENSES AND REGULATIONS

- (A) *It shall be unlawful for any individual as the agent or employee of another regulated under this Section to sell edible goods in the City, unless his or her principal or employer has received a permit under this Section.*
- (B) *A permit issued under this Section is not transferable.*
- (C) *It shall be unlawful for an individual to sell edible goods while displaying a valid permit issued by the City of Hazleton in the name of another individual organization or entity.*
- (D) *It shall be unlawful for any individual directly or through an agent or employee to sell goods within the corporate limits of the City after the expiration of the permit issued by the City of Hazleton under this Section.*
- (E) *It shall be unlawful for an individual, directly or through an agent or employee, to misrepresent on the permit affidavit any acts that are regulated under this Section.*
- (F) *It shall be unlawful for any individual directly or through his agents or employees to represent that the issuance of a permit by the City of Hazleton constitutes the City’s endorsement or approval of the product for sale.*
- (G) *It shall be unlawful to operate a mobile food vendor operation that is not in compliance with the Pennsylvania Food Establishment Rules, as amended from time to time.*

- (H) It shall be unlawful to operate or do business as a Mobile Food Vendor without a Mobile Food Vendor Permit.*
- (I) It shall be unlawful to operate a mobile food business or as a mobile food vendor without valid insurance as described herein.*
- (J) It shall be unlawful to operate a mobile food business or as a mobile food vendor in any restricted area as defined herein.*
- (K) It shall be unlawful to operate a mobile food business or as a mobile food vendor after 10:00 pm in an area which is predominately residential in nature.*
- (L) It shall be unlawful to operate a mobile food business or as a mobile food vendor after 3:00 am in an area which is predominately business/commercial in nature.*
- (M) It shall be unlawful to operate a mobile food business or as a mobile food vendor prior to 7 am any day of the week or weekend.*
- (N) It shall be unlawful to operate a mobile food business or as a mobile food vendor in, on or about any public thoroughfare or stationary location in excess of ten (10) minutes.*

SECTION 8
EXEMPTIONS

Individuals selling only non-refrigerated farm products in an unrefined state shall be considered as a mobile food vendor as defined by this Ordinance, but shall be exempt from the requirements of this Ordinance during the hours of operation of a permitted farmer's market event. This exemption does not exempt the food vendor from obtaining a vendor's permit.

Mobile food vendors as defined by this Ordinance, during any officially sanctioned City event, may also be exempt from the requirements of this Ordinance. This exemption does not exempt the food vendor from obtaining a vendor's permit.

SECTION 9
PENALTY/ FINES

A violation of this Section is described as any person who conducts transactions or engages in any business, trade, profession, or any other activity within the City of Hazleton without a business license, or in violation of above section, shall, upon summary conviction before a Magistrate, be fined not less than three hundred (\$300.00) dollars, and not more than one thousand (\$1,000.00) dollars for any one

(1) offense, recoverable with costs and restitution, or imprisoned not more than ninety (90) days, if the amount of such fines and costs are not paid. Multiple violations of the same section, violation(s) at multiple locations, and each day of a continuing violation shall be considered as separate offenses.

SECTION 10
SEVERABILITY

The provisions of this Ordinance are severable and if any of its sections, clauses or sentences shall be held illegal, invalid or unconstitutional, such provision shall not affect or impair any remaining sections, clauses or sentences of the same.

If any portion of this Ordinance, or its application to any person or circumstances, is held invalid, the validity of the Ordinance as a whole, or any other portion thereof, or the application of the provisions to other persons or circumstances is not affected.

If any one or more sections, subsection, or sentences of this Ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance, and the same shall remain in full force and effect.

Finally, that any ordinance, resolution or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.

SECTION 11
EFFECTIVENESS

This Ordinance shall become effective thirty (30) days after enactment.

ORDAINED AND ENACTED by Council this 12th day of September, 2018.

First Reading
(August 8, 2018)

Presented Barletta
Seconded Mope
Barletta Y
Colombo Y
Mope Y
Perry Y
Gavio absent

Second Reading
(Sept. 12, 2018)

Presented Barletta
Seconded Mope
Barletta Y
Colombo Y
Mope Y
Perry Y
Gavio Y

Third Reading
(Sept. 12, 2018)

Presented Mope
Seconded Barletta
Barletta Y
Colombo Y
Mope Y
Perry Y
Gavio Y

ORDINANCE PASSES UNANIMOUSLY ON 9/12/2018

