

Sponsor: Councilman Pope
First Reading: 09/06/16
Second Reading: 09/19/16
Third Reading: 10/03/16
Ord. No.: 006-16

AN ORDINANCE TO CREATE A NEW CHAPTER 51 ESTABLISHING REGULATIONS SPECIFIC TO MOBILE FOOD VENDORS (A/K/A FOOD TRUCKS) AND TO MAKE CORRELATED CHANGES TO CHAPTER 50 “PEDDLERS AND SOLICITORS” AND CHAPTER 49 “BUSINESS LICENSES”

WHEREAS, the Town of Smyrna is authorized under section 4.2.25 of the Town Charter to “provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants;”

WHEREAS, mobile food vendors or “food trucks” create business opportunities for entrepreneurs that the Town of Smyrna seeks to encourage;

WHEREAS, the Town of Smyrna previously adopted regulations pertaining to Peddlers and Solicitors, which regulations need to be updated and revised; and

WHEREAS, it is necessary for the Town of Smyrna to establish reasonable restrictions to allow mobile food vendors to operate in Smyrna while minimizing any negative impacts to the health, safety, and welfare of the residents of the town.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, as follows:

Section 1. The Town Code of the Town of Smyrna is hereby amended by adding a new Chapter 51, Mobile Food Vendors, as follows:

Chapter 51 – Mobile Food Vendors

Sec. 51-1. - Definitions.

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

Mobile food vendor means a food establishment operated within a self-propelled vehicle or within a trailer, kiosk or cart (or something similar) that is pulled by a vehicle, where food or beverage is cooked, prepared and/or served in a ready-to-consume condition in individual portion sizes. Ice cream trucks are specifically exempted from this definition.

Public property means any parcel of land or any street, sidewalk, alley, parking lot, or right-of-way owned or controlled by the Town of Smyrna.

Section 51-2. Licenses

- (1) Each operator of a mobile food vendor shall secure a license issued by the town authorizing the operation of their mobile food service business within the town for the licensed period beginning on the date such license is issued. Such license shall not be transferable. Each license shall expire one year after the date of issuance identified on the license. Each license issued shall be signed by an authorized representative of the mobile food vendor and shall contain the following: name of the mobile food vendor, the permit number, the fee paid, the issue date, the expiration date, and the name of each individual who will be operating under the license. The fee for a mobile food vendor license shall be \$25.00.
- (2) Prior to the town issuing a mobile food vendor license, the operator of the mobile food vendor shall provide the town with proof of insurance and such license, certificate, or other documentation from the State of Delaware evidencing that the mobile food vendor has obtained all necessary approvals and inspections from the State of Delaware. Such evidence, along with the license issued by the town, shall at all times be prominently displayed in a publically visible location on the mobile food vendor.

Section 51-3. Restrictions

- (1) *Location restrictions.* Mobile food vendors shall be subject to the following restrictions.
 - a. No mobile food vendor shall be located within 50 feet of the primary entrance (e.g. front doors) of a restaurant, measured in a straight line from the mobile food vendor to the primary entrance of the restaurant, without the express written consent of the owner of the restaurant.
 - b. No mobile food vendor shall violate any building setback line or be located beneath any overhead utilities.
 - c. A mobile food vendor may be parked or otherwise situated on public property in conjunction with a public event when authorized by the Town of Smyrna pursuant to the public event procedures outlined herein.
 - d. A mobile food vendor may be parked or otherwise situated on public property as long as the mobile food vendor (and any associated vehicle) complies with all parking restrictions and motor vehicle laws. A mobile food vendor shall not be situated on public property in such a way that it impedes the flow of traffic or makes it difficult for two cars to pass in opposite directions in the vicinity of the mobile food vendor.
 - e. A mobile food vendor shall not be parked on sidewalks but may serve food from a location on a street to customers standing on an abutting sidewalk.
 - f. Locations on public property where mobile food vendors may operate shall be available on a first come, first served basis. In the event two or more mobile food vendors are routinely seeking to park at the same public property location, the town may use a lottery system to determine a schedule for that particular location.
- (2) *Trash receptacles.* All mobile food vendors shall have sufficient trash receptacles to accommodate the trash generated by their customers.
- (3) *Dining areas.* Mobile food vendors may provide tables, chairs, benches, stools, and/or any other furniture for use as a dining area as long as such furniture is located within ten feet of the mobile food vendor and does not impede pedestrian or vehicular traffic.
- (4) *Self-contained.* All mobile food vendors must be self-contained with all cooking equipment, fuel sources, electric power, or other facilities being part of the mobile food vendor unit.
- (5) *Public events.* When participating in a public event sponsored or supported by the Town of Smyrna, mobile food vendors may be located on public property provided that mobile food vendors shall only operate at

those locations and during those hours specifically designated by the town for mobile food vendors at the public event. For any such event, the town may place a limit on the number of mobile food vendors that are permitted to participate if, given the circumstances surrounding the event and the event's location, limiting the number of mobile food vendors is necessary to promote the health, safety, and welfare of the town or to promote a diversification of goods being sold at a particular event. If the town places a limit on the number of mobile food vendors permitted to participate in a public event, the town shall use a lottery system to determine which mobile food vendors may participate, and any mobile food vendor(s) not selected shall be given first priority at the next public event in which the mobile food vendor seeks to participate. If two or more mobile food vendors are not selected and seek priority status at the same subsequent public event, a lottery system shall again be used as outlined herein.

- (6) *Insurance requirements.* Mobile food vendors shall provide the town with a certificate of a general liability insurance policy in the amount of at least \$100,000 before a license will be issued to the mobile food vendor, which insurance shall be maintained for the duration of the license, including any subsequent license renewals. The insurance policy shall list the town as an additional insured and shall include a provision prohibiting the cancellation of the policy without prior advanced notice to the town.
- (7) *Hours of operation.* Mobile food vendors shall not operate or be parked on public property overnight between one hour past dusk and one hour before dawn. When located on private property, mobile food vendors shall open no earlier and close no later than the opening and closing times of the principal business located on the property on which the mobile food vendor is situated. When located on private property that does not have an associated principal business, the public property restrictions on operating hours shall apply.
- (8) *Signs.* No more than three signs shall be attached to the mobile food vendor establishment, and the maximum aggregate display surface area of the signs shall not exceed 30 square feet.
- (9) *Lighting.* Only self-contained lighting is allowed. High intensity lights or lighting that spills over from the site sufficient to cause glare, distract drivers, or obstruct vision is prohibited.
- (10) *Sales of non-food items.* Items offered for sale must be primarily food-related. Selling merchandise unique to the mobile food vendor, such as clothing or other items containing the mobile food vendor's logo, is allowed as long as such activities are ancillary to the selling of food.

Sec. 51-4. - Penalties.

Any person violating any of the provisions of this chapter shall be subject to a fine of not less than \$150.00 nor more than \$500.00. Each day a violation continues shall be considered an additional violation under the ordinance, which shall be subject to additional penalties.

Section 2. Amend Chapter 50 ("Peddlers and Solicitors"), Section 50-1 ("Definitions") by making insertions as shown by underlining and deletions as shown by strike through as follows:

Sec. 50-1. - Definition.

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

Peddler means any individual, whether a resident of this town or not, traveling by foot, wagon, automobile, truck, or any other type of conveyance, from place to place, from house to house, or from street to street, or in a generally fixed location on public property, for the sale of, as well as the selling, offering for sale or exchange for a donation, or taking or attempting to take orders for the sale of goods, wares and merchandise, or personal

property of any nature whatsoever for future delivery, or for services to be furnished or performed at that time or in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale, or whether or not he is collecting advance payments on such sale. An individual's classification as a peddler under this definition shall be unaffected by the fact that the individual also, for himself or herself, or for another person, hires, leases, uses, or occupies any building, structure, tent, hotel room, lodging house, apartment, shop, office or any other place within this town for the purpose of exhibiting samples and taking orders for future delivery. The term "peddler" shall include the terms "canvasser," "solicitor," "transient or itinerant merchant or vendor," and "transient or itinerant photographer." Peddler shall not include wholesale sales representatives dealing with retail businesses within the town, individuals delivering previously ordered goods, ice cream trucks, or mobile food vendors as defined in chapter 51.

Section 3. Amend Chapter 49 (“Business Licenses”), Section 49-8 (“Exemptions”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

Sec. 49-8. Exemptions.

Anything in this chapter to the contrary notwithstanding, the following activities are exempt from the business licensing requirement outlined herein:

- (1) Deliveries of goods or property to a licensed business for use or resale in that business.
- (2) Utility companies otherwise authorized by the town to operate within the town limits.
- (3) Charitable, religious, educational, or public service facility, social association or club, or governmental agency except to the extent that such operate a separate retail facility, provided that any third parties operating on behalf of any such entities shall not be exempted from obtaining a business license.
- (4) Exhibitor in a museum, the Smyrna Library, the Smyrna Opera House, an educational facility, or other public building where such exhibition is part of a limited scheduled event or show.
- (5) Yard or garage sales, book sales, and auctions where not part of a regularly recurring or continuous business activity.
- (6) Sale of agricultural or nursery items grown on the premises of the property owner.
- (7) Any activities permitted pursuant to a current peddler’s license or otherwise exempt from obtaining a peddler’s license as outlined in Chapter 50 – Peddlers and Solicitors.
- (8) Construction activities for which a license is required and has been secured in accordance with Chapter 18 (“Buildings and Building Regulations”), Article XIX (“Licensing”), Division 1 (“License Required for Building Contractors”).
- (9) Business activities of insurance agents and companies specifically exempted from municipal business license fees under 18 *Del. C.* § 712.
- (10) Rental activities for which a rental license has been obtained pursuant to Article XI (“Rental Properties”).
- (11) Mobile food vendors obtaining a license pursuant to Chapter 51 (“Mobile Food Vendors”).

Section 4. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision

that it cannot be presumed that the Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with Town Council's intent.

SYNOPSIS

This ordinance establishes requirements for mobile food vendors and specifies that mobile food vendors must have adequate insurance, trash receptacles, can have limited dining areas, and are not permitted within 50 feet of restaurants. This ordinance outlines details surrounding the participation of mobile food vendors in public events and specifies the licensing procedures. This ordinance outlines restrictions for mobile food vendors located on public and private property. The minimum penalty for violation of this ordinance is \$150.00 and the maximum penalty is \$500.00. This ordinance clarifies the definition of peddler found in chapter 50. Lastly, mobile food vendors obtaining a license as a mobile food vendor are not required to get a business license.

This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on _____, 2016.

ATTEST:

Council Secretary

Mayor

This shall certify that the title and synopsis of this Ordinance was published in the "Smyrna/Clayton Sun Times" on _____, 2016 and posted at the Town Hall on _____, 2016.

So Certifies:

Town Clerk