

AN ORDINANCE OF THE CITY OF CLARKSBURG TO CREATE AN ORDINANCE
LICENSING AND SETTING FORTH RESTRICTIONS ON MOBILE FOOD VENDORS

WHEREAS, Mobile Food Vendors have been operating or expressing a desire to operate within the City;

WHEREAS, Council desires to encourage Mobile Food Vendors to operate within the City;

WHEREAS, the current ordinances regarding transient merchants and peddlers do not serve to encourage operating within the City as opposed to other localities;

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY OF CLARKSBURG, WEST VIRGINIA, AS FOLLOWS:

MOBILE FOOD VENDORS

Section 1 - PURPOSE.

The Council finds that allowing mobile food vendors to operate, subject to practical regulations and limitations, is beneficial to persons living and working within the city. 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 2 - 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:

- (1) *Commissary* means a permitted 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.
- (2) *Edible food products* means 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.
- (3) *Food truck* means a vehicle from which edible food products are cooked, prepared or assembled with the intent to serve or sell such items to the general public, provided further that food trucks may also serve or 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.
- (4) *Food truck rally* means a gathering of more than five food trucks that may or may not have been coordinated or advertised. A food truck rally requires a special event license.

- (5) *Ice cream truck* means a vehicle from which the operator sells only pre-packaged frozen dairy or water-based food products and pre-packaged beverages. For purposes of this article, a non-motorized cart from which such products are sold shall be considered an ice cream truck.
- (6) *Location* means any single property parcel, any combination of contiguous parcels that are owned or controlled by a single entity or affiliated entities, the abutting public ways of afore-described properties, or all public ways consisting of or greater than two contiguous city blocks, regardless of abutting ownership or control.
- (7) *Mobile food service vehicle* means a food truck, canteen truck, or ice cream 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.
- (8) *Mobile food vendor permit* means a permit issued by the city for the operation of a mobile food service vehicle.
- (9) *Operate* means to serve or sell food, beverages, and other permitted items from a mobile food service vehicle and includes all tenses of the word. Operator means any person operating or permitted to operate a mobile food service.
- (10) *Permit administrator* means the City's Director of Finance to oversee the issuance, suspension, and revocation of mobile food vendor permits.
- (11) *Vehicle* means 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 3 - GENERALLY.

- (a) It is a violation to operate a mobile food service vehicle at any location except in compliance with the requirements of this article.
- (b) Mobile food service vehicle operators must comply with all federal, state, and local licensing and permitting regulations and all business and occupation tax, sales tax, and other tax requirements.
- (c) All mobile food service vehicle must comply with the zoning ordinance and all zoning requirements set forth in these Ordinances. If a use to which a mobile food service vehicle is to be put is disallowed by zoning law in a designated zone or district, it shall not otherwise be permitted under this article.
- (d) The permit administrator is hereby authorized to promulgate rules and regulations supplemental to the provisions herein for the purpose of carrying out the administration and enforcement of such provisions.
- (e) The sole activity that may be exempted from zoning ordinance compliance set forth in subsection (c) herein shall be for vendors whose business is itinerant in nature and where the vendor stops solely for the purpose of making a sale or sales and remains in one area, hereby designated as one city block, for less than ten minutes. Further, door to door sales of food items not intended for immediate consumption, as well as the home delivery of prepared food, shall be exempted from subsection (c).

Section 4 - 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 city property except as may be specifically allowed by the city. When allowed in the public right-of-way, a food truck must be positioned so as to comply with the requirements of Section 5 herein. Operation of food trucks within any park shall be subject to rules and regulations established by the Board of Park Commissioners. Operation of food trucks on city streets adjacent to any park shall be governed by this article. Operating of any food truck within any City-owned off-street parking facilities shall be subject to rules and regulations established by the Parking Authority. Food trucks shall not operate on property owned by a public entity other than the city unless specifically allowed by such public entity. No unattended food truck shall be left at any time in the right-of-way or parked on any other public property overnight. Notwithstanding any other provision contained in this article, no food truck may operate on the public right-of-way directly fronting, partially fronting, or abutting an existing restaurant, concession stand, or any other entity serving prepared meals or food during business hours.
- (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 the zoning ordinances 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 city immediately upon request.
 - B. *Maximum number of food trucks.* No more than ten food trucks may operate at any location unless a special event license has been issued.
 - C. *Placement on lot.* 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 6:00 a.m. and ending at 3:00 a.m. in the downtown business district or any other district not identified as a residential district in the zoning ordinance. The city may place other restrictions on an operator's mobile food vendor permit, or the hours of operation may be more restrictive in accordance with a property owner's directive when private property is used. The city may permit extended hours of operation for a licensed special event.

Section 5 - OPERATING REQUIREMENTS.

(a) *Vehicle requirements.*

- (1) *Design and construction.* Mobile food service vehicles must be designed and constructed for the purpose of preparation and sale of the specific type of food being sold, or they must be so modified to comply with this Article and all applicable public health and safety laws.

- (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) *Right-of-way.*
- (1) Mobile food service vehicles other than ice cream trucks may not operate, stop, stand, or park in any area of the right-of-way that is intended for use by vehicular travel, except in the event of a street closure for a special event. Mobile food service vehicles, including ice cream trucks, may not operate, stop, stand, or park that in any way violates the provisions of the traffic control ordinances of this Code, impedes the flow of traffic, interferes with ingress or egress to or from any property or presents an unsafe condition for patrons, pedestrians, or other vehicles.
- (2) Mobile food service vehicles on any street 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 or pavement.
- (3) 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 or if there is an area provided on a paved sidewalk that permits compliance with subsection (d) of this section.
- (c) *Business access.* No mobile food service vehicle may operate in a location that impedes the ingress to or egress from another business or otherwise causes undue interference with access to another business.
- (d) *Pedestrians.* If on or adjacent to a sidewalk, the components of a mobile food service vehicle's operations, including signage, seating areas, and patron queue may not reduce the clear pedestrian path of travel on the sidewalk to less than four feet. All awnings or canopies of the vehicle shall be at least six feet, eight inches above the sidewalk.
- (e) *Safety and fire prevention.* All mobile food service vehicles must be equipped with fire extinguishers. No power cord, cable, or equipment shall be extended across any public street or sidewalk.
- (f) *Noise.* No sounds that are otherwise prohibited by this Code may be produced by a mobile food service vehicle's operation. All generators used by food trucks must be 100 decibels or less. The permit administrator may request a demonstration of the generator at any time. If, in the opinion of the permitting authority the generator either violates any noise ordinance, or if it would cause undue annoyance or inconvenience to the public or to residences, the permit may be refused or revoked until a satisfactory alternative is provided.
- (g) *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.
- (h) *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 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.

- (i) *Pedestrian service only.* Mobile food service vehicles shall serve pedestrians only. Drive-through or drive-in service is prohibited.
- (j) *Signage.* Signage for each mobile food service vehicle shall not impede traffic or pedestrian travel or visibility. The restrictions on sandwich boards shall not apply when the mobile food service vehicle is parked and/or operating in a parking lot.
- (k) *Alcohol Sales.* Food trucks may not sell alcoholic beverages, except as may be specifically allowed by applicable state law and city ordinance. Ice cream trucks are prohibited from selling alcoholic beverages.
- (l) *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 city property shall maintain commercial insurance.
 - (3) In the event the required coverage is not properly maintained, permission to operate on city property will be immediately revoked.
 - (4) Proof of insurance is a prerequisite to the issuance of the permit and must be provided with the permit application.
- (m) *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.
- (n) *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 the zoning ordinance and applicable Health Department requirements.

Section 6. MOBILE FOOD VENDOR PERMITS

- (a) *Required.* The designated permit administrator shall oversee the issuance, suspension, and revocation of mobile food vendor permits. No mobile food service vehicle may operate within the city without a mobile food vendor permit issued by the city. 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 Ordinance and as specified on the permit.
- (b) *Exception.* 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.
- (c) *Application.*

- (1) To obtain a mobile food vendor permit, a mobile food service vehicle operator must complete an application form provided by the city. The application shall include the following information:
 - A. Name and address of the owner of the vehicle.
 - B. Name and address of the business owner and the vehicle identification number (VIN) of the vehicle used as a mobile food service vehicle.
 - C. A certificate of insurance coverage, including required motor vehicle insurance coverage.
 - D. A signed acknowledgement that the operator has read this article and will comply with all applicable requirements herein.
 - E. Any additional information required by the permit administrator.
 - (2) Submittal of an application for a mobile food vendor permit must be accompanied by payment of an application fee in the amount of \$50, provided that for any mobile food service vehicle previously found to be operating within the city without a current permit, the application fee shall be \$100.
 - (3) Each applicant must also have a City business license as required by Article 711 or be applying for such license as part of the application process.
 - (4) Each mobile food vendor permit holder shall have an ongoing duty to provide the city with notice of any change to any of the information submitted with its permit application.
- (d) *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 permit administrator denies the application, such denial shall be in writing and provided to the applicant within 15 days of receipt of the application.
- (e) *Expiration and transferability.* A mobile food vendor permit expires at change of ownership or change in the general type or cuisine of food served. A mobile food vendor permit may not be transferred. The operator of the mobile food service vehicle shall notify the city within ten days of any such sale or remodeling and shall update any information that has been changed since the submittal of the application for the mobile food vendor permit.

Section 7. ENFORCEMENT

- (a) *Citation.* Each of the following circumstances constitute a violation of this article, for which a citation may be issued by a code enforcement officer or police officer of the city:

- (1) 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.
 - (2) Holding a food truck rally without a special event license or failing to comply with the conditions of approval for a special event license.
 - (3) Failure to comply with any other provision of this article.
- (b) *Suspension of permit.* A mobile food vendor permit shall be suspended by the permit administrator if:
- (1) The applicant for the permit knowingly provided false information on the application.
 - (2) 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.
 - (3) 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) The permittee has failed to pay taxes or licenses as they become due.
- (c) *Revocation of permit.* A mobile food vendor permit shall be revoked by the permit administrator if:
- (1) Four violations of this article have occurred within a 12-month period.
 - (2) 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.
- (d) *Reinstatement.*
- (1) *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 \$500 to offset the city's cost of enforcement measures, inspections and compliance verifications.
 - (2) *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 \$500 to offset the city's cost of enforcement measures, inspections and compliance verifications.
 - (3) No permit will be issued 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.
- (e) *Notice.* Notice of the suspension or revocation of a mobile food vendor permit shall be issued to the operator in writing by the permit administrator.

Section 8 - APPEALS.

- (a) *Filing.* The denial, suspension, or revocation of a mobile food vendor permit by the permit administrator may be appealed by filing a written notice of appeal, establishing the grounds for the appeal, with the City Manager or designee no later than ten business days following receipt of the notice of denial, suspension, or revocation.
- (b) *City Manager's review.* When an appeal is filed with the City Manager as set forth herein, the City Manager or his designee may request such additional information from the operator and the permit administrator as may be deemed necessary. At the City Manager's or designee'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 permit administrator. The City Manager's decision shall be issued in writing, based on a written summation of the pertinent facts, and shall be final. The City Manager 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.
- (c) *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 City Manager or his designee determines on appeal that the permit administrator acted in error in suspending or revoking the permit.

Section 9 - MISCELLANEOUS.

- (a) In case of conflict between this ordinance or any part hereof, and the whole or part of any existing ordinance of the city, the provision that establishes the higher standard shall prevail.
- (b) 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 article.

Effective Date: This Ordinance shall be effective upon passage.

PASSED by Council of the City of Clarksburg on FIRST READING on this ___ day of _____, 2021.

PASSED by Council of the City of Clarksburg on SECOND AND FINAL READING, following a public hearing, on this ___ day of _____, 2021.

E. Ryan Kennedy, Mayor

ATTEST:

ANNETTE M. WRIGHT
CITY CLERK

APPROVED AS TO FORM:

RICHARD R. MARSH
CITY ATTORNEY