

RUSH TOWNSHIP, SCHUYLKILL COUNTY
COMMONWEALTH OF PENNSYLVANIA

ORDINANCE NO. 213

AN ORDINANCE OF RUSH TOWNSHIP, SCHUYLKILL COUNTY, COMMONWEALTH OF PENNSYLVANIA, REPEALING ORDINANCE NO. 208; REQUIRING EITHER DAILY PERMITS OR AN ANNUAL PERMIT FOR MOBILE FOOD FACILITIES, SUCH AS FOOD TRUCKS; CREATING AN EXCEPTION; ESTABLISHING REGULATIONS APPLICABLE TO ALL PERMIT HOLDERS; PRESCRIBING PENALTIES FOR VIOLATIONS; AND CONTAINING REPEALER, SEVERABILITY, AND EFFECTIVE DATE PROVISIONS.

NOW, THEREFORE, pursuant to the powers provided to the Rush Township Board of Supervisors by 53 P.S. Section 66506, it is hereby ORDAINED as follows:

Section 1. Definitions.

The following words and phrases when used throughout this Ordinance shall have the meanings provided for them herein unless the context clearly indicates otherwise.

“Mobile Food Facility” or “MFF” – A moveable retail food facility, such as a stand, vehicle, cart, basket, box or similar structure, from which food is stored, prepared, processed, distributed or sold. The terms shall include what is commonly referred to as a food truck, or a motorized vehicle or trailer equipped to cook, prepare, serve and/or sell food. The terms shall not include a motorized vehicle of a Mister Softee, Inc. franchise, or a motorized vehicle providing a similar service, for the selling of predominantly ice cream or ice-cream-related items (although such motorized vehicles may be regulated by other Township ordinances).

“Person” – a natural person, or any other legal entity.

“Township” – Rush Township, Schuylkill County, Commonwealth of Pennsylvania.

Section 2. Permit Requirements.

A. No Person may operate, or allow or cooperate in the operation of, an MFF in the Township without a valid and active permit from the Township being in effect for the MFF. Each separate MFF shall require a separate permit. A property owner who allows an MFF that is operating without a permit to operate or vend from the property owned shall be considered to be cooperating in the operation of an MFF.

B. Any Person wanting a permit from the Township to operate a MFF may apply to the Township for a permit. The Township may devise an official application that it may require be completed for a permit for an MFF from time to time by Resolution. Any permit application, whether official or unofficial, must contain at least the following information for a permit to be issued: the name, address, and contact phone number of the owner of the MFF; the name, address and contact phone number of the applicant for the permit and the applicant's relation to the owner; if the owner of the MFF is not a natural person, a signed statement from the applicant for the permit of his/her acceptance of responsibility for compliance, and corresponding exposure to citation for any non-compliance, with this Ordinance; the driver's license number of any natural person who will drive the MFF (if the MFF is a vehicle); the license plate number, make, model and year of the MFF (if the MFF is a vehicle); proof of a current vehicle registration for the MFF (if the MFF is a vehicle); proof of current vehicle insurance for the MFF (if the MFF is a vehicle); proof of general liability insurance coverage for the MFF; proof of a valid license for an MFF issued by the Commonwealth of Pennsylvania's Department of Agriculture; if the MFF will be parked on private property, proof of permission from the each property owner for any intended parking or placement of the MFF on private property through the duration of the permit; a plan or sketch depicting the type and each location of the MFF during the life of the permit, including whether parking or seating for customers is provided (a single permit application, and a single permit, is required even if the MFF will change locations going from different parcel to different parcel at times during the life of the permit, provided each such parcel is described on a separate plan or sketch at the time of application); and whether the permit(s) requested is/are for specific dates or is an annual permit. The application shall be considered filed when completed, and submitted to either the Township Secretary or the Township official appointed pursuant to Section 2D of this Ordinance along with the fee required by Section 2C of this Ordinance.

C. The Township may charge a reasonable fee that must be submitted with any application for a permit. The fee may be set from time to time by Resolution.

D. The Township may appoint a specific official, such as the Township Zoning Officer, from time to time by Resolution, to receive applications, issue permits, decide whether permits should be revoked, monitor compliance with this Ordinance and file any necessary citations for violations of this Ordinance.

E. An issued permit shall be valid, unless revoked, for a specific date or specific dates (if a daily permit is applied for), or for a period of 12 months (if an annual permit is applied for). Any revocation of the permit shall be in writing and shall be considered revoked either immediately upon personal service on the owner or applicant listed in the permit application, or 48 hours after mailed by first class mail to the owner or applicant listed on the permit application.

F. An issued permit may be revoked by the Township Official in charge of issuance as a result of any violation of this Ordinance, whether or not said violation results in a citation or other court proceeding.

G. Any permit(s) issued for a specific date or specific dates is/are valid only for the date(s) issued, rain or shine. If an event for which a daily permit was obtained is postponed due to weather or any other reason, a separate daily permit needs to be obtained for any make-up date.

H. Any Person aggrieved by a decision to deny or revoke a permit, or by not receiving a decision on an application for a permit within 15 calendar days of delivery of said application pursuant to Section 2B of this Ordinance, may appeal said decision or such non-action by appearing before the Board of Supervisors at a regular monthly Township meeting and addressing the matter.

Section 3. Exception to Permit Requirements.

No MFF operating at the location of operation, and on any day of operation, of the business commonly referred to as the Hometown Farmers Market, located at the time of this Ordinance at 125 Mahanoy Avenue (Tax Parcel Numbers 25-08-0059.001 and 25-08-0058.000) along Route 54 in the Township, need obtain or possess a permit under Section 2 of this Ordinance for such operation.

Section 4. General Regulations.

The following regulations apply to all MFF's and permit holders. If a MFF fails to follow any of the following regulations, the owner and/or applicant listed on the application may be subject to the Penalties as prescribed by Section 5 of this Ordinance. If a permit holder fails to follow any of the following regulations, the permit may be revoked and/or the owner and/or applicant listed on the application may be subject to the Penalties prescribed by Section 5 of this Ordinance.

- A. The MFF shall at all times of operation be licensed as a Mobile Food Facility or MFF by the Pennsylvania Department of Agriculture. (If any violation of any rules or regulations of the Department of Agriculture relating to licensing, such as those stated in the Mobile Food Facility Operation Guide issued by the Pennsylvania Department of Agriculture (a 26-page document, dated 05.2016, which can be located by going to the website at www.agriculture.pa.gov and typing Mobile Food Facility Operation Guide into the search engine), is alleged to a Township official, a Township official may pass on such allegation(s) to a Department of Agriculture official).
- B. The MFF may not operate in a manner inconsistent with any statements made on, or plans or sketches submitted with, the permit application required in Section 2B of this Ordinance.
- C. The MFF may not operate in an area classified as a residential district (of whatever subclass or density) in the Township Zoning Ordinance unless it is operating under a daily permit at a residential property, and is providing or selling items to only residents or guests attending an event at that residential property.
- D. The MFF shall not be parked or placed so as to impede the safe flow of vehicle traffic on a public roadway or right-of-way.
- E. The MFF, if parked on a public roadway or right-of-way, shall be parked in a designated parking area/space.
- F. The MFF shall not be operated within 20 feet of a fire hydrant, within 50 feet of a residential building (except as allowed in sub-section C above), within 200 feet of a structure in which a restaurant is operated, or within 500 feet of a school while the school is in session.
- G. Vending at the MFF may only occur between the hours of 7:00 a.m. and 9:00 p.m.
- H. In non-vending hours, an MFF shall be completely closed and secured, with all food and materials stored inside.
- I. If an MFF is located on private property, permission of the property owner is required.
- J. The MFF shall provide adequate trash receptacles to prevent trash or debris from being discarded or deposited on or around the vending location, and all trash receptacles shall be emptied as needed throughout the day and at the end of the day.

K. The MFF shall be in compliance with all laws of the United States of America, the Commonwealth of Pennsylvania, and the Township. For example, if the MFF provides seating for its customers, it may fall under the definition of a "Restaurant, Fast Food" in the Rush Township Zoning Ordinance, and therefore must meet the requirements of Section 1649B of the Rush Township Zoning Ordinance.

L. The MFF shall not display food outside.

M. If customer parking is being provided for an MFF operating on private property, there shall be an approved vehicle access area to get to and from the private property from a public roadway or right-of-way.

N. All licenses issued to the MFF by the United States of America, the Commonwealth of Pennsylvania and the Township shall be valid and copies shall be posted in a visible location.

O. A person-in-charge responsible for all aspects of the MFF's compliance with this Ordinance shall be present at all times that vending is occurring.

P. If the MFF is a vehicle parked alongside or on a public roadway, the MFF may only be open to, and only serve customers from, the side of the facility facing away from the flow of traffic.

Q. Any advertising sign displayed by the MFF shall be temporary, shall not exceed 8 square feet, shall not block any vehicular, bike or pedestrian traffic, and shall not contain any flashing lights, and no more than 1 sign per vending location is allowed.

R. The MFF's awning or canopy shall be above normal customer or pedestrian height.

S. The MFF shall not interfere with the proper operation of stormwater management facilities.

T. No liquid waste or grease from the MFF shall be disposed of in storm drains, or directly onto any public or private property in the Township.

Section 5. Penalties.

A. Enforcement of this Ordinance may be by action brought before a District Justice in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. The Township Solicitor may assume charge of the prosecution without the consent of the District Attorney as required under Pa.R.Crim.P. No. 83(c).

B. Any Person found to be in violation of any part or provision of this Ordinance, upon conviction, shall pay a fine of no less than \$100 nor more than \$1,000, plus costs, and/or may be sentenced to a term of imprisonment either for a violation of any part or provision of this Ordinance or for failure to pay a fine or costs for a term not to exceed 30 days.

C. Enforcement of this Ordinance may be by action in equity in the Court of Common Pleas of Schuylkill County.

D. Each day on which a violation is found to exist, or each part or provision of this Ordinance which is found to have been violated, shall be a separate offense.

Section 6. Repealer.

Township Ordinance No. 208 is repealed by this Ordinance. All other prior Township Ordinances or portions thereof, except the Township Zoning Ordinance, which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give effect to this Ordinance.

Sections 7. Severability.

If any part or provision of this Ordinance is found by a court of competent jurisdiction to be illegal or unenforceable, the rest and remainder of this Ordinance shall be given full force and effect as if adopted by Township without the part or provision found illegal or unenforceable.

Section 8. Effective Date.

This Ordinance shall be effective 5 days after adoption.

ADOPTED AND ORDAINED this 16th day of February, 2023.

ATTEST



RUSH TOWNSHIP BOARD OF SUPERVISORS






