ORDINANCE NO. 2 OF 2021

An Ordinance of Foster Township, Luzerne County, Pennsylvania, Amending the Code of Ordinances to Regulate Mobile Facilities

Chapter 146
Mobile Facilities

§146-1. Title.

This ordinance may be known and cited as the "Foster Township Mobile Facilities Ordinance".

§146-2. Purpose.

The purpose of this ordinance is to regulate, control, and inspect mobile facilities as that term is defined in this ordinance within Foster Township. The regulations are designed to protect the public health, safety, and welfare of the residents of the Township and the customers of the mobile service establishments.

§146-3. Definitions.

For purposes of this ordinance:

"Alley"- means a street intended to provide access to the rear or side of lots or buildings and not intended for the purpose of through vehicular traffic.

"Board of Supervisors"- means the Foster Township Board of Supervisors.

"Code Enforcement Officer"- means the person appointed by the board of supervisors to administer and enforce the ordinances of the township, including this ordinance.

"Land"- means a designated parcel, tract or area of real property established by plat, subdivision or otherwise by law, where a mobile facility will operate.

"Landowner"- means the legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee authorized under a lease to exercise the rights of the landowner, or other person having a proprietary interest in land.

"Mobile Facilities" or "Mobile Facility"- includes movable retail facilities on wheels, such as a stand, vehicle, cart, basket, box, tent, or similar structure, from which food, beverages or goods are stored, prepared, processed, distributed, or sold and the facility physically locates on land and operates within the township. This term does not include:

A. The catering of prepared food to a specific location not open to the public for a limited duration such as the feeding of employees at a factory or business, or a special occasion such as a ribbon cutting ceremony, welcoming of a new business, or household picnic or party.

B. The operation of mobile facilities during township sponsored or approved special events.

C. Uses that are otherwise regulated by the Foster Township Zoning Ordinance.

"Operate" or "Operating"- means the parking, standing, or stopping of a mobile facility in a stationary location within the township.

"Owner"- includes the person operating a mobile facility or entitled to the use and possession of the mobile facility; the person, other than a lienholder, having the right in or title to the mobile facility; the landowner upon which a mobile facility is operating; or the applicant of a permit or permit holder under this ordinance.

"Person"- includes any individual, firm, partnership, limited liability partnership, limited liability company, cooperative, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company, or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a mobile facility in the absence of the principal.

"Right-of-Way"- means the legal right, established by usage or grant, to pass along a specific route through grounds or property belonging to another. A public right of way is a public right to travel unhindered over a piece of land**,** even if that land is privately owned. For purposes of this ordinance, this term refers to streets located in the township.

"Street"- means the entire width between the boundary lines of every way publicly or privately maintained when any part thereof is open to the use of the public for purposes of vehicular travel and the terms include that portion of a highway, road, or street improved, designed, or ordinarily used for vehicular travel, including sidewalks, berms, shoulders, and stormwater facilities, if any.

"Stationary Location"- means the position of the mobile facility when not in motion and selling or offering the sale of prepacked food or prepared food, beverages, or goods to consumers or customers.

"Stand" or "Standing" – means the halting of a mobile facility.

"Stop" or "Stopping"- means complete cessation from movement of a mobile facility.

"Township"- means Foster Township, Luzerne County, Pennsylvania.

§146-4. Compliance with ordinance.

It shall be unlawful for any person or owner to operate a mobile facility on any land within the township except in compliance with the requirements of this ordinance.

§146-5. Permit required.

A. Every person operating a mobile facility must first obtain a permit from the code enforcement officer prior to operating the mobile facility withing the township.

B. A permit shall only be valid for the land specified in the application.

C. Each mobile facility must be permitted separately.

D. Every person shall display the permit issued to them on the original form provided by the code enforcement officer in a conspicuous place on the mobile facility during operation.

E. A permit may not be transferred. The transfer of a controlling interest in the mobile facility shall terminate the permit, thereby requiring the new owner to obtain a new permit for the mobile facility.

§146-6. Permit application.

A. An applicant for a permit shall apply not less than 30 days prior to the anticipated operation of the mobile facility. The code enforcement officer should act on the permit within that 30-day period.

B. An application shall require the following information:

(1) Name of Applicant.

(2) Legal name of business or entity.

(3) EIN Number.

(4) State of incorporation and copies of the filing of the partnership or corporate entity with the state corporation bureau.

(5) If applicable, the current listing of directors, partners, officers, shareholders, members, or principles. Publicly traded companies are exempt from this requirement.

(6) Sales tax number with a copy of the sales tax permit.

(7) A copy of the fully executed ground lease or license or other signed and written permission from the landowner.

(8) Name, phone number, and driver license number of the owner of the mobile facility.

(9) Contact name and phone number for the mobile facility while in operation.

(10) Description of items being sold from the mobile facility.

(11) Description and number of any attached signs.

(12) Vehicle identification number, license plate number and state, and copy of insurance and vehicle registration.

(13) Make, model and year of the mobile food facility or the mobile vehicle used

to move the mobile facility.

(14) Plot plan showing the location of the mobile facility parked on the land, including setbacks from the mobile facility to the property lines (front, side, and rear) and the location and number of designated parking spaces for the mobile facility.

(15) A copy of the retail food license issued for a mobile food facility by the Pennsylvania Department of Agriculture.

C. It shall be unlawful for any person to make a false application for a permit, or to give or file, or direct the giving or filing of, any false information with respect to the permit required under this ordinance.

§146-7. Permit fee.

A. At the time of adoption of this ordinance the fee for a permit is $150.00. The board of supervisors may be resolution change the fee for the issuance of a permit.

B. The permit fee will not be prorated and shall be valid for the calendar year in which it is issued ending December 31st.

C. No refund shall be made for a mobile facility that is discontinued during the calendar year.

§146-8. Mobile facility regulations.

A. A mobile facility may not:

(1) Park, stand, stop, or operate:

i. In a public or private street right-of-way or alley.

ii. Within 25 feet of the primary entrance of any land having another use.

iii. In violation of the Pennsylvania Vehicle Code.

(2) Operate in a stationary location for a duration exceeding 14 hours during any 24-hour period. A mobile facility may only be located on the land specified in the application while it is in operation and must be removed from the land at the end of each day.

(3) Operate on land in such a manner as to cause traffic congestion or impede vehicular or pedestrian traffic.

(4) Operate on any land without the written permission from the landowner.

(5) Operate on land where another permitted mobile facility is operating.

(6) Drain wastewater onto the ground or any public or private street or alley or be deposited into any storm or sewer drain outlet.

(7) Project continuous music or repetitive sounds beyond the property line of the land where the mobile facility is located.

B. A mobile facility shall:

(1) Only operate between the hours of 7:00 am and 9:00 pm.

(2) Comply with Article 10 of the Foster Township Zoning Ordinance relating to signs.

(3) Direct all lighting away from public rights-of-ways and adjoining properties.

(4) Provide a portable waste receptacle for costumers located within 20 feet of the mobile facility. The owner shall be responsible for proper disposal of the contents of the waste receptable. Waste receptacles may not be left out when the mobile facility is not in operation.

(5) Minimize noise from any generator so as not to offend neighboring property owners.

(6) Maintain a five-foot clear space around the mobile facility at all times, except for the required portable waste receptacle.

(7) Be located within the confines of the land upon which it is located and shall be setback at least 25 feet from a side yard line and 30 feet from a rear yard line. The mobile facility may not in a loading space, driveway, or parking aisle.

(8) Have contain a tagged fire extinguisher with a 10 BC rating and a Class K fire extinguisher. The extinguisher shall be readily accessible for use by the owner.

(9) Have proper electrical power maintained and installed as per the International Electrical Code. Extension cords may not run across areas accessible to the public, and vehicular and pedestrian travel.

(10) Offer public restroom facilities when providing outdoor seating. When required, the public restroom facilities may be portable, but must be available upon the land where the mobile food facility is located while it is operating. Informational signs directing the public on where and how to access the restrooms must be posted at the order window while the mobile food facility is operating on the land.

(11) Provide a minimum of five off-street parking spaces on the land where the mobile facility is operating.

(12) File proof of general liability and automobile insurance with the township.

(13) Have a highway occupancy permit for access to a street by the applicable governmental issuing authority.

(14) Be made of fireproof construction or nonflammable material when a tent is being used to sell such items such as fireworks or flowers. The tent shall be securely fastened to the ground by use of pegs or barriers. If pegs are used, the pegs must contain rubber caps and be clearly marked to avoid creating a tripping hazard. The tent shall be tied down to withstand wind loads of at least 115 miles per hour. Proof of wind load shall be provided at the time of application. The tent must be removed immediately following the event for which it was erected. Any required state licenses shall be provided at the time of application.

(15) Only be permitted in the B-3 HIGHWAY COMMERICAL DISTRICT as depicted on the official Foster Township Zoning Map.

§146-9. Notice and appeal rights.

A. The code enforcement officer shall provide written notice for a violation, and a denial or revocation of a permit under this ordinance. However, oral notice may be sufficient when the violation involves a matter of imminent danger to health and safety of the public.

B. Written notice shall be given, by personal service, posting of the mobile facility, or by regular United States mail, postage prepaid, to the owner of the mobile facility.

C. For a violation, the notice shall direct compliance within 10 days following service of the notice. Any notice issued for a violation of this ordinance shall be sufficient to constitute notice of any subsequent violation provided that the violation is for the same section of this ordinance and the violation occurs within the same calendar year.

D. Any aggrieved person shall have the right to appeal to the board of supervisors, provided that a written appeal is filed with the township within 10 days after the day the notice was issued.

E. Any person aggrieved by any decision of the board of supervisors may appeal to the County Court of Common Pleas of Luzerne County within 30 days of the mailing of the decision.

§146-10. Enforcement and penalties.

A. The code enforcement officer or any police officer may enforce the provisions of this ordinance.

B. Any person or owner who violates or permits the violation of this ordinance shall be guilty of a summary offense, and, upon conviction, shall be sentenced to pay a fine of not more than $1,000.00 plus the costs of prosecution, and, in default of payment of fine and costs, to imprisonment for a term of not more than 30 days, or a civil penalty of not more than $600.00 together with court costs and reasonable attorney fees. A separate violation shall arise for each day of violation and each applicable section of the ordinance.

§146-11. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be

deemed a separate and distance and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

§146-12. Repealer.

All ordinances or parts thereof which are inconsistent with this ordinance are hereby repealed to the extent of their inconsistencies.

§146-13. Effective date.

This ordinance shall become effective immediately following its adoption.

ENACTED AND ORDAINED this 10th day of March, 2021 by the Foster Township Board of Supervisors.

ATTEST:

Secretary

BOARD OF SUPERVISORS:

Gerald Brogan, Chairperson

John Pavuk, Vice Chairperson

Georgiann Eckrote-Jones, Secretary/Treasurer