

TOWN OF SMITHFIELD
NOTICE OF PUBLIC HEARING

Town Council to consider adoption of Chapter 237 – Entitled “Mobile Food Establishments”

Public Hearing Date: Tuesday, September 17, 2019
Time: 7:00 p.m.
Place: Smithfield Town Hall, 64 Farnum Pike, 2nd Floor

Proposed Ordinance Chapter 237 – Entitled “Mobile Food Establishments”

***The Proposed Ordinance is as follows:
Sections 237-1 through 237-14.***

The public is welcome to any meeting of the Town Council or its subcommittees. If communication assistance (readers/interpreters/captions) or any other accommodation to ensure equal participation is needed, please contact the Smithfield Town Manager’s office at 401-233-1010 at least forty-eight (48) hours prior to the meeting.

To view the full text of the proposed ordinance amendment, please visit the office of the Smithfield Town Clerk during normal business hours (8:30 a.m. to 4:30 p.m.) or visit the Town’s Web Site at: www.smithfieldri.com.

By order of the Town Council:

Carol A. Aquilante, MMC
Town Clerk

**ORDINANCE OF THE TOWN OF SMITHFIELD AMENDING PART II OF THE
SMITHFIELD CODE OF ORDINANCES ENTITLED "GENERAL LEGISLATION" BY
ADDING THERETO CHAPTER 237 ENTITLED "MOBILE FOOD
ESTABLISHMENTS"**

Whereas the purpose of this Ordinance to regulate Mobile Food Establishments in a manner that is consistent with the provisions of Rhode Island General Law Chapter 5-11.1 entitled "State Mobile Food Establishment Registration Act in addition to those regulations promulgated under 230-RICR-30-35-1.

Whereas , The Town Council of the Town of Smithfield desires to amend , by Ordinance , Part II of the Smithfield Code of Ordinances entitled "General Legislation" by adding thereto Chapter 237 entitled " Mobile Food Establishments" .

IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SMITHFIELD AS FOLLOWS:

**SECTION 1. THAT SECTION II OF THE SMITHFIELD CODE OF
ORDINANCES BE AMENDED BY ADDING THERETO CHAPTER 237
TO READ AS FOLLOWS :**

**Chapter 237
Mobile Food Establishments**

§ 237-1. Definitions.

As used in this article, the following terms shall have the meanings indicated:

MOBILE FOOD VEHICLE — A vehicle which, upon issuance of a license by the Town Clerk and conformance with the regulations established by this article, may temporarily park on a public street or private property and engage in the service, sale or distribution of food, prepared on site, for individual portion service to the general public directly from the vehicle.

MOBILE FOOD VEHICLE VENDOR — The registered owner of a mobile food vehicle or the owner's agent or employee.

STATIONARY FOOD VENDOR — A stationary vendor that is selling or offering for sale any food or beverage, on any private property from a stationary location, and remaining on site during nonoperational hours.

§ 237-2. Scope.

The provisions of this article apply to mobile food vehicles or stationary food vendors engaged in the business of cooking, preparing and distributing food or beverage with or without charge upon or in public and private restricted spaces. This article does not apply to those vehicles that would be considered strictly a hawker or peddler distributing prepared foods, such as catering trucks and/or ice cream/lemonade trucks. See Chapter 268-1 through 268-5 provisions covering hawkers and peddler licensing.

§ 237-3. License required.

- A. It shall be unlawful for any person to operate within the Town a mobile food vehicle or be a stationary food vendor without having obtained from the Town Council a license for that purpose.
- B. Except for stationary food vendors licensed prior to passage of this article, no licenses shall be issued for stationary food vendors in the Town of Smithfield.
- C. A person desiring to operate a mobile food vehicle shall make written application for such license or renewal of such license to the Town Clerk. A person desiring to operate as a stationary food vendor who qualifies under Subsection B above shall make written application for renewal of such license to the Town Clerk. The application for a license or a renewal of license shall be on forms provided by the Town Clerk and shall include the following:
 - (1) Name, signature, phone number, e-mail contact and business address of the applicant.
 - (2) A description of the preparation methods and food product offered for sale, including the intended menu.
 - (3) Information on the mobile food vehicle, to include year, make and model of the vehicle and dimensions, which shall not exceed 36 feet in length or 9 feet in width.
 - (4) Information setting forth the proposed hours of operation, area of operations, and plans for power access, water supply and wastewater disposal.
 - (5) If utilizing private property, a stationary food vendor who is licensed under the provisions of this article must present to the Town Clerk, and must retain a copy to keep in his or her possession, a notarized letter from the owner of the property on which he or she is selling authorizing the person to sell upon the property. This authorization must be current and must state for how long the permission is granted, but in no event will same authorization be valid for a period of more than one year.
 - (6) Copies of all necessary license and permits issued by the Rhode Island Department of Health and the Rhode Island Division of Taxation.
 - (7) Any person applying for a license under the provisions of this article shall sign a hold-harmless agreement indemnifying the Town of Smithfield, its officers, agents and employees from any liability arising out of or in the course of his or her business or the granting of a license for same.
- D. All Town sponsored events shall be exempt from the licensing requirements of this section.

§ 237-4. State tax permit required.

- A. Each person, upon applying for a license must show acceptable proof to the Town Clerk or his or her designee of having been issued a current State of Rhode Island sales and use tax permit or must provide a tax-exemption permit.

B. Each person licensed under this article shall be required to:

- (1) Maintain the validity of his or her sales and use tax permit for the duration of his or her license.
- (2) Collect and remit all applicable sales taxes to the State of Rhode Island and list any sales made in the Town of Smithfield.
- (3) Conspicuously display his or her sales tax permit.

§ 237-5. State health permit required.

A. Each person, upon applying for a license, and whose business will include the sale of any food or beverage, must show acceptable proof to the Town Clerk or his or her designee of having been issued from the Department of Health a current State of Rhode Island permit for the sale of food.

B. Each person licensed under this article shall be required to:

- (1) Maintain the validity of his or her permit for the sale of food for the duration of his or her license.
- (2) Conspicuously display his or her permit for the sale of food.

§ 237-6. Hold-harmless agreement required.

It is further required that any person applying for a license under the provisions of this article sign a hold-harmless agreement indemnifying the Town of Smithfield, its officers, agents and employees from any liability arising out of or in the course of his or her business or the granting of a license for same.

§ 237-7. Issuance fee.

- A. The fee for the issuance of a license granted pursuant to this article shall be \$75. Each mobile food establishment or stationary food vendor to be used by a person shall be separately licensed, and the license fee chargeable hereunder shall be paid for each such mobile food establishment or stationary food vendor.**
- B. There shall be a \$50 per license fee for each mobile food establishment license granted pursuant to this article, which shall be paid upon application by an existing restaurant situs located in the Town of Smithfield.**

§ 237-8. Duration and expiration date of license.

All licenses issued under the provisions of this article shall be for a term of one calendar year and shall expire on the first day of March unless sooner revoked or voided under the provisions of this article.

§ 237-9. Personal nature of license; nontransferability.

All licenses issued under the provisions of this article shall authorize only the person named therein to sell and offer for sale as aforesaid. No license issued under the provisions of this article shall be transferable. A license is valid for one vehicle only and shall not be transferred between vehicles.

§ 237-10. Regulations.

A. No operator of a mobile food vehicle or stationary food vendor shall park, stand or move a

vehicle and conduct business within areas of the Town where the license holder has not been authorized to operate.

- B. The customer service area for mobile food vehicles shall be on the side of the truck that faces a curb, lawn or sidewalk when parked. No food service shall be provided on the driving-lane side of the truck. No food shall be prepared sold, or displayed outside the mobile food vehicles.
- C. No mobile food vehicle vendor shall provide or allow any dining area within 10 feet of the mobile food vehicle, including, but not limited to, tables and chairs, booths, stools, benches or stand-up counters.
- D. Customers shall be provided with single-service articles, such as plastic utensils and paper plates, and a waste container for their disposal. All mobile food vehicle vendors or stationary food vendors shall offer a waste container for public use which the vendor shall empty at its own expense. All trash and garbage originating from the mobile or stationary food operations shall be collected and disposed of offsite by the operators each day. Spills of food or food by-products shall be cleaned up, and no dumping of gray water, grease, or anything on the streets is allowed.
- E. No mobile food vehicle, vehicle vendor, or stationary food vendor shall make or cause to be made any unreasonable or excessive noise. The operation of all food vehicles shall meet the Town Noise Ordinance, including generators. No loud music, other high-decibel sounds, horns, or amplified announcements are allowed.
- F. No flashing or blinking lights or strobe lights are allowed by stationary food vendor or mobile food vehicles or related signage when the vehicle is parked and engaged in serving customers. All exterior lights with over 60 watts shall contain opaque hood shields to direct the illumination downward.
- G. Mobile food vehicles when parked on public streets shall be parked in conformance with all applicable parking restrictions and shall not hinder the lawful parking or operation of other vehicles.
- H. Mobile food vehicles shall be allowed to operate from 7:00 a.m. to 10:00 p.m., seven days a week, including holidays.
- I. A mobile food vehicle shall not: (1) be parked on the street overnight; or (2) be left unattended and unsecured at any time food is in the vehicle. Any mobile food vehicle found to be in violation of Subsection I (1) or (2) above shall be considered a public safety hazard and may be ticketed and towed away.
- J. The issuance of a mobile food vehicle license does not grant or entitle the vendor to the exclusive use of any legal public spot within the prescribed territorial limits.
- K. No mobile food vehicle shall use external signage, bollard, or other equipment not contained within the vehicle. When extended, awnings for mobile food vehicles shall have minimum clearance which does not present a hazard to pedestrians.
- L. Any power required for the mobile food vehicle located on a public way shall be self-contained and a mobile food vehicle shall not use utilities drawn from the public right-of-way. Mobile food vehicles on private property may use electrical power from the property being occupied or an adjacent property, but only when the property owner provides written consent to do so. All

power sources must be self-contained. No power cable or equipment shall be extended at or across any Town street, alley or sidewalk.

§ 237-11. Territorial limits.

- A. The following limits further define where a mobile food vehicle can and cannot operate:
- (1) Not in a residential zone, unless part of a duly licensed special event or an event not open to the public. (See Chapter 186, Article III, Special Events).
 - (2) Not within 500 feet of any open brick-and-mortar restaurant.
 - (3) Not within 500 feet of any public or private school, or municipal park, unless specifically part of a duly licensed special event. (See Chapter 186, Article III, Special Events)
 - (4) Not within 20 feet of driveways, bus stops or crosswalks.
 - (5) Not in a handicap parking area or no-parking zone.
 - (6) Not within 500 feet of any fair, festival, special event or civic event that is licensed or sanctioned by the Town unless the vendor has obtained permission from the event sponsor and is duly licensed or has a special event permit issued by the Town of Smithfield. (See Chapter 186, Article III, Special Events)
 - (7) Not in an area where such operation is deemed by the Chief of Police, or his/her designee, to endanger or inconvenience the general public or where there is determined to be a disturbance of the peace.
 - (8) Not on private property without the written permission of the owner of the property, and such permission shall be conspicuously displayed at all times.

§ 237-12. Visibility of license; issuance and wearing of badge.

- A. Each person granted a license in accordance with the provisions of this article shall conspicuously exhibit the license at all times while selling within the Town limits.'

§ 237-13. Violations and penalties.

- A. Any person violating any of the provisions of this article may be fined not less than \$50 nor more than \$500 and his or her license may be revoked by the Town Council for the remainder of its term. Any licensee whose license is revoked by the Town Council for the first time shall not have the right to reapply for another license under this article for the next successive licensing year. Any licensee whose license is revoked by the Town Council for the second time shall not have the right to reapply for another license under this article for the next two successive licensing years. Any licensee whose license is revoked by the Town Council for the third time shall be permanently barred from reapplying for another license under this article.
- B. Every individual sale or offer for sale made contrary to the provisions of this article shall be deemed and construed as a distinct and separate offense, and the person making the sale or offer of sale shall be prosecuted therefor in the manner hereinafter prescribed.
- C. Upon the cancellation or revocation of any license, the person holding the license shall surrender or return the same to the Town Clerk or his/her designee.
- D. Any person operating without the appropriate license shall be fined a minimum of \$250 for each offense and any associated vehicle and may be ticketed and impounded by the Smithfield police.

§ 237-14. Severability.

If any provision of this article is to be held invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

SECTION II. THIS ORDINANCE SHALL TAKE EFFECT 30 DAYS AFTER ITS ADOPTION BY THE SMITHFIELD TOWN COUNCIL.

APPROVED AS TO ITS FORM AND LEGALITY:

TOWN SOLICITOR

ADOPTED:_____

TOWN COUNCIL PRESIDENT

TOWN CLERK

Title 230 Department of Business Regulation (includes the Office of the Health Insurance Commissioner)
Chapter 30 Commercial Licensing
Subchapter 35 Mobile Food Establishments
Part 1 State Registration of Mobile Food Establishments
Type of Filing Adoption
Regulation Status Active
Effective 07/01/2019

Regulation Authority :

R.I. Gen. Laws § 5-11.1-5, 5-11.1-6, 5-11.1-7, 5-11.1-11, 5-11.1-14.

Purpose and Reason :

Pursuant to the enactment of R.I. Gen. Laws Chapter 5-11.1 in the 2018 legislative session (the “Act”), the Department is required to implement the state registration of Mobile Food Establishments in 2019. In order complete the implementation process, the Department is proposing this regulation which:

- Sets forth the application requirements for MFE registration in Rhode Island;
- Establishes procedures for the issuance and renewal of registrations;
- Clarifies that out-of-state MFEs are required to register prior to operating in RI;
- Requires municipalities to accept municipal permit applications electronically, email or other system;
- Clarifies and centralizes fire safety requirements with the Office of the State Fire Marshal;
- Sets fees late renewals and maximum fees for municipal permits and owners of multiple MFEs;
- Sets forth municipal reporting requirements; and
- Establishes procedures for enforcement actions involving MFEs, including a maximum civil penalty for violations of the Act or regulation.

The Department expects to have a system in place to accept state MFE registrations by July 1, 2019, the date required by R.I. Gen. Laws § 5-11.1-8 for compliance by municipalities. In an effort to not overburden businesses while regulations, fees and systems are being determined, the Department has proposed a grace period in the regulation until December 31, 2019, for the 1st year of operation. For those MFEs that obtain or renew a permit or license with any municipality prior to July 1, 2019, the MFE operator will not be required to do anything further for 2019. The Department is seeking comments on all aspects of the proposed regulation.