

Bill # 2020-02

This proposed ordinance is to repeal and replace Ord. No. 553, Food-Handling Establishments, adopted 5/10/1954.

First Reading: 04/13/2020 Second Reading: 05/11/2020
Adopted: 05/11/2020 Effective 05/21/2020_

Chapter 94 Ordinance #1291- Retail Food Facilities

GENERAL REFERENCES

Curbstone market — See Ch. 109.
Peddling and soliciting — See Ch. 124.
Property maintenance — See Ch. 130.
Zoning — See Ch. 175.

94-1 Purpose and intent. In the interest of the health, safety, and welfare of the public, the City Council acting on its authority as the City Board of Health shall be the licenser for retail food facilities located within the City limits, including mobile food facilities for which the associated commissary/service area is located within the City limits. The City Health Officer shall administer and enforce the provisions related to retail food facilities in accordance with Pa Title 3, Agriculture, Chapter 57, Food Protection, Subchapter A, Retail Food Facility Safety and as amended; The Mobile Food Facility Operation Guide dated 05/2016 published by the PDA and subsequent editions thereof; additional guidelines as may be published by the PDA; and the provisions as established herein.

94-2 Definitions. As used in this chapter, the following terms shall have the meanings indicated:

Bed and breakfast homestead or inn. As defined by section 5702 of Pa Title 3

Commissary/Service Area: Is a facility to which a mobile food facility returns daily for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and where food is kept, handled, prepared, packaged, or stored. This may not be a private residence and if located on a residential property must be completely separated from personal use areas.

Employee. As defined by section 5702 of Pa Title 3

Food Code. The U.S. Food and Drug Administration's Model Food Code as adopted and amended by the Commonwealth of Pennsylvania; Pa Title 3, Chapter 57, Food Protection; and any other applicable laws and codes in effect including the provisions of this chapter.

Food Employee. As defined by section 5702 of Pa Title 3

Health Officer. The Health Officer of the City of Sunbury or authorized representative.

License. As defined by section 5702 of Pa Title 3

Licensors. The City Council of the City of Sunbury acting upon its authority as the City Board of Health shall be the licenser for permanent food facilities located within the city limits. The PA Department of Agriculture shall be the licenser for mobile food facilities operating within the city limits.

Mobile Food Facility (MFF). A movable retail food facility, such as a stand, vehicle, cart, basket, box or similar structure, from which food is stored, prepared, processed, distributed or sold and the facility:

(1) physically locates at one site or location for no more than 14 consecutive days, in one calendar year, regardless of whether or not the facility operates continuously during that time period; and

(2) is not licensed as a temporary retail food facility (TFF) under section 5703(g)(2) of the statute.

Owner/operator. A person, partnership, association or corporation conducting or operating a mobile food facility.

Permanent Food Facility. A non-movable retail food establishment including but not limited to a restaurant, club, coffee shop, cafeteria, short-order cafe, luncheonette, tavern, firehall, soda fountain and all other public eating and drinking establishments, as well as kitchens in which food and drink are prepared for sale elsewhere to the public.

Person in charge. As defined by section 5702 of Pa Title

Potentially hazardous food. As defined by section 5702 of Pa Title 3.

Proprietor. As defined by section 5702 of Pa Title 3.

Public eating or drinking place. A place within this Commonwealth where food or drink is served to or provided for the public, with or without charge. The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.

Person. Person, firm, corporation or association, either an owner or employee.

Retail food establishment. An establishment which stores, prepares, packages, vends, offers for sale or otherwise provides food for human consumption and which relinquishes possession of food to a consumer directly, or indirectly, through a delivery service such as home delivery of grocery orders or delivery service provided by common carriers. The term does not include

dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.

Retail food facility. A public eating or drinking place or a retail food establishment.

Temporary Food Facility. Means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

94-3 Applicability. This chapter and the provisions herein apply to retail food facilities operating within the City of Sunbury including permanent food facilities, mobile food facilities supported by a commissary operating within the City of Sunbury and shall not apply to temporary food facilities as defined herein.

94-4 Exemption. The following retail food facilities shall be exempt from the license requirements of the City of Sunbury.

A. A retail food facility in which only prepackaged, non-potentially hazardous food or beverages are sold.

B. A retail food facility that sells only raw agricultural commodities.

C. A retail food facility that is in compliance with the act of July 20, 1974 (P.L.537, No.184), referred to as the Honey Sale and Labeling Act, and in which 100% of the regulated products offered for human consumption are produced or processed on the farm on which the retail food facility is located.

D. A food bank owned by a charitable nonprofit entity and operated for charitable or religious purposes.

E. A soup kitchen owned by a charitable nonprofit entity and operated for charitable or religious purposes.

F. A retail food facility that operates on no more than three days each calendar year.

G. A school cafeteria.

H. A retail food facility that is owned by a charitable nonprofit entity and that is one or more of the following:

1. Managed by an organization which is established to promote and encourage participation or support for extracurricular recreational activities for youth of primary and secondary public, private and parochial school systems on a not-for-profit basis. This subparagraph does not apply to organized camps.

2. Offers only foods that are non-potentially hazardous foods or beverages.

3. The exemption shall be void and the provisions for licensure shall apply when the facility is required by the PA Liquor Control Board to have such license.

I. A retail food facility in which food or beverages are sold only through a vending machine.

J. A retail food facility which is owned by a church, association of churches or other religious order, body or institution which:

1. Qualifies for exemption from taxation under section 501(c)(3) or (d) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501).

2. Is not subject to unrelated business income taxation under sections 511, 512 or 513 of the Internal Revenue Code of 1986 for activities undertaken under this chapter.

K. A retail food facility that is exempted from the license requirements under this section shall remain subject to all other provisions of this subchapter and inspection which shall be conducted upon request or complaint or may be conducted as a random spot-inspection at any time.

94-5 Indemnify and hold harmless. The retail food facility owner/operator shall indemnify and hold harmless the City of Sunbury, its agents, servants, workmen, employees, and City Council members from any and all liability arising out of their engaging in retail food sales in the City of Sunbury. Nothing herein shall be construed to waive, relinquish, or limit any defenses available to the City of Sunbury under the governmental immunity laws of the Commonwealth of Pennsylvania.

Article I - Permanent Food Facility

94-6 License required. No person shall operate a permanent food facility in the City of Sunbury without first obtaining a License to Operate a Public Eating and Drinking Place from the City Health Officer. The license shall be posted in the food facility in a conspicuous place so as to be seen by customers, vendors, employees, and patrons of the subject facility. The license remains the property of the City Board of Health and shall be surrendered on demand from the City Health Officer, or other City official acting on behalf of the City Board of Health. License is valid for one year from date of issue.

94-7 License fee required. The license fee shall be as may be set from time to time by resolution of the City Council required. Failure to pay such fee shall be sufficient reason for the revocation of such license by the Health Officer.

94-8 Suspension/revocation of license. The Health Officer may suspend or revoke the license on grounds of the owner/operator's failure to comply with the provisions of the Food Code. Owner/operator shall have the right to appeal the Health Officer's action, within 30 days of

notice of the action, to the City Board of Health.

94-9 Examination and condemnation of food or drink.

Samples of food and drink may be taken and examined by the Health Officer as often as deemed necessary for the detection of unwholesomeness or adulteration. The Health Officer may condemn and forbid the sale of, or cause to be removed or destroyed, any food or drink which is deemed unwholesome or adulterated.

94-10 Inspections of establishments.

The Health Officer shall inspect every permanent food facility within the City of Sunbury according to the standards set forth by the Department of Agriculture prior to issue or renewal of license. The Health Officer may inspect any food facility upon request by the proprietor or upon the receipt of complaint about the food safety or as a random spot-inspection at any time. The Health Officer shall provide a copy of the inspection report to the owner/operator; enter the report into the system as designated by the Department of Agriculture; and retain a copy of the report on file in the City Clerk's Office. Reports shall be available for public review.

A. In case the Health Officer discovers any improper sanitation measures, a second inspection shall be scheduled after the lapse of such time as deemed necessary for the defect to be remedied, and the second inspection shall be used in determining compliance with the requirements of this chapter.

B. Two consecutive inspections showing the same violation shall call for an immediate suspension of a license.

94-11 Application for reinstatement of license.

Any retail food establishment, the license of which has been suspended, may at any time make application for the reinstatement of the license for a fee as shall be set from time to time by resolution of the City Council

Article II - Mobile Food Facility (MFF)

94-12 License required. No person shall operate a mobile food facility having a commissary/service area located within the city limits without first obtaining a License to Operate a Public Eating and Drinking Place from the City Health Officer. The license shall be posted in the food facility in a conspicuous place so as to be seen by customers, vendors, employees, and patrons of the subject facility. The license remains the property of the City Board of Health and shall be surrendered on demand from the City Health Officer, or other City official acting on behalf of the City Board of Health. License is valid for one year from date of issue. License application shall be made in accordance with the Mobile Food Facility Operation Guide published by the Pa Department of Agriculture and the licensing processes as outlined in Article I and the associated fees shall apply.

94-13 Permit required. Except for MFFs licensed under the jurisdiction of the City of Sunbury, no person shall operate a MFF within the City of Sunbury on public properties, public rights of way, or private property when serving food to the public, without having obtained a permit from the City Health Officer. The permit requirement shall not apply to any TFF as defined herein. The permit shall be valid for 6 months from the date of issue.

A. Permit application. The MFF owner/operator shall submit an application at least 10 business days prior to operating in the city and on a form provided by the City of Sunbury along with the following documents for inspection by the City Health Officer:

1. Retail Food License in good standing with the Department of Agriculture
2. Food Employee Certificates as required by the PDA for every Food Employee
3. Comprehensive Liability Insurance. Each street vendor shall maintain, and provide the City of Sunbury with proof thereof, comprehensive liability insurance with a minimum policy limit of \$500,000 per person and \$1,000,000 per occurrence coverage for personal injury, and \$50,000 coverage for property damage.

B. Payment of fee required. The fee shall be as set from time to time by resolution of the City Council. Such fee shall be non-refundable and non-proratable.

94-14 Permit use. Permit shall be on the premises of the MFF while in operation in the City of Sunbury and shall be produced upon request by the Health Officer or other City Official along with the PDA Retail Food License and Food Employee Certificates. Permit is nontransferrable.

94-15 Operating a MFF. Owner/operator shall comply with statutes and regulations of the Commonwealth of Pennsylvania with regard to cooking, utensils, refrigeration, appliances, materials and food storage and other matters, and a license issued by the Department of Agriculture shall be prominently displayed on the MFF for view by patrons.

94-16 MFF design. MFF shall be designed to be attractive and not offensive in any way.

94-17 Trash and recycling. MFF shall have a trash receptacle with a tight-fitting lid, and the owner/operator shall be responsible for the disposal of trash generated by its business. Owner/operators are responsible for proper disposal of the trash whenever the container becomes full or, at a minimum, at the conclusion of the day's operation, but not in receptacles provided for by the City of Sunbury. All refuse must be recycled in accordance with the City of Sunbury's recycling ordinance.

94-18 Signage. Only signs identifying the owner/operator's name, business name and contact/social media information and a listing of the items available for sale are permitted on a MFF.

94-19 Fire Extinguisher. All MFF's equipped with a heat source shall be equipped with a

serviceable fire extinguisher.

94-20 Operation locations/limitations. While operating in the City of Sunbury, the following provisions regarding operating locations shall be followed.

A. MFF may operate on private property only with the permission of the owner of said property

B. MFF may operate in a municipal parking lot. When operating in a metered municipal parking lot, a parking permit shall be required.

C. MFF may operate in a metered parking space on a public street. When operating in a metered parking space, a parking permit shall be required.

D. MFF shall not operate in a non-metered space on a public street without having obtained a permit from the Code Administration Office and paid a fee as shall be set from time to time by resolution of the City Council.

E. When operating on a public street, the MFF shall be placed in such a way as the customer service area is positioned away from vehicle traffic.

F. MFF shall not operate within 100 feet of a permanent food facility without the express permission of the owner/operator of said facility or unless the permanent food facility serves as the commissary for the MFF.

G. MFF shall remove its portable facility each day and return to its permanent commissary or service area as set forth in 94-2 when having ceased food service operations.

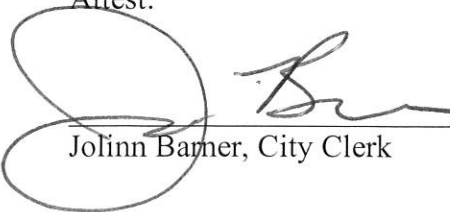
H. When operating in a Residential or Neighborhood Business zoning district, the MFF shall be prohibited from running generators or creating noise in violation of the City's Noise Ordinance.

Article III. Violations and Penalties

94-21 Any person, firm or corporation violating any of the provisions of this chapter shall for each violation, upon conviction thereof, pay a penalty of not more than \$1000, plus costs of prosecution or imprisonment for a period not exceeding 90 days or both. Each day that a violation is permitted to exist shall constitute a separate offense.

Attest:

Adopted by the City of Sunbury


Jolinn Barner, City Clerk


Kurt Karlovich, Mayor