

ORDINANCE NO. 2017 -1038

AN ORDINANCE OF THE BOROUGH OF LEHIGHTON, CARBON COUNTY, PENNSYLVANIA AUTHORIZING VENDING CARTS AND TRUCKS AND SETTING FORTH OPERATION STANDARDS, APPLICATION AND SELECTION, CRITERION, LICENSE SUSPENSION AND REVOCATION, FEES, APPEALS AND PENALTIES.

BE IT ENACTED AND ORDAINED by the Borough Council of the Borough of Lehighton that the Code of the Borough of Lehighton shall be amended to add the following article regarding vending carts and trucks:

SECTION 1. Intent and purpose.

The Council, desiring to promote and facilitate the continued revitalization of Lehighton Borough by fostering a program which would positively contribute to the aesthetic appearance, vitality and excitement of the Borough, increase the pleasurable experience of both shoppers and Borough residents and enhance the success of the existing merchant base, finds and declares that the establishment of a strictly regulated sidewalk cart vendor and truck vendor program, limited as to location and type of vendor so as not to impede or be disruptive to orderly and efficient pedestrian use of the sidewalks or Borough areas such as parks and streets, nor unduly interfere with established business upon whose success the continued vitality of the Borough depends, would significantly and substantially contribute to the Borough's revitalization and be, therefore, in the public interest.

SECTION 2. Definitions.

For the purposes of this article, certain terms shall be defined as follows:

CART VENDOR/TRUCK VENDOR. A person selling or offering for sale food products or natural products from a vending cart or vending truck.

CART AND TRUCK VENDING AREAS. The public sidewalks encompassed within and limited to the downtown area of Lehighton Borough including First Street, Second Street and Stanley Hoffman Blvd., and specifically including the Trailhead located along Stanley Hoffman Blvd., and such other public areas within the Borough as may be designated by Resolution of Borough Council.

CART AND TRUCK VENDING LOCATIONS. A fixed location within a cart and truck vending area as has been designated by the Borough Manager to be available for placement of a vending cart or vending truck licensed under this Article.

FIRE CHIEF. The Fire Chief of the Borough of Lehigh and his/her assistants.

FOOD PRODUCTS. Includes and shall be limited to such foods intended for immediate consumption following sale as can, without threat or danger to the public health, be maintained and sold from portable vending carts and trucks which shall include, but not be limited to food and non-alcoholic beverages such as, but not limited to biscuits or sandwiches made from biscuits, hot dogs, sausages, bagels, pastries, candy, fresh fruit, burritos, kabobs, sushi, chicken, beef or pork meet, pre-packaged sandwiches, chips, pop corn, nuts, pretzels, ice products, ice cream, milk products, frozen yogurt, hot and cold beverages containing no alcohol, and condiments related to permitted merchandise. Tobacco products are not permitted merchandise.

NATURAL PRODUCTS. Includes and shall be limited to whole fruits and vegetables (uncut, unfrozen, unprocessed, raw fruits and vegetables), flowers and such other nonmanufactured products suitable for sale from portable vending carts or vending trucks where the vending cart or vending truck occupies a designated location.

PERSON. Any individual, firm, partnership, association, corporation, company or organization of any kind, and when used in any clause prescribing and imposing a penalty, "person" includes the individual members, partners, officers and managers (or any of them) of partnerships, associations and similar entities, and other officers, directors and managers (or any of them) of corporations.

SECTION 3. Cart and Food Vendor License; Fees; Food Employee Certification;
Food Code.

- A. License required. No person shall sell or offer for sale any food products or natural products on any cart and or truck vending area in the Borough unless holding a cart vendor license or truck vendor license, issued under this article or being a part of an activity or program approved as a special event by the Office of the Borough Manager.
- B. Location and type. A cart vending license or truck vending license shall only be issued for and restricted to cart vendor sales or truck vendor sales of natural products and/or food products from an approved vending cart or vending truck, at a specific and fixed cart vending or truck vending location in a cart vending or truck vending area, which restrictions shall be specified on the license issued.

- C. License term and fees. A cart vending or truck vending license shall be issued for a one-year term from the date of issuance, renewable annually upon payment of an annual license fee, to be established by resolution of Borough Council, and faithful adherence to the requirements of this article and the regulations promulgated hereunder.
- D. A cart vending or truck vending license may also be issued for a shorter period of time for community events upon payment of a licensed fee to be established by resolution of Borough Council.
- E. License nontransferable. A cart vending or truck vending license when issued shall not be transferable to another holder except upon the death or disability of the holder, and any prohibited transfer of the license shall work an automatic forfeiture thereof. If the license holder is not a natural person, the transfer of any ownership interest in the holder of the license shall be deemed a prohibited transfer.
- F. Food employee certification. All cart and truck vendors who offer natural products for sale shall comply with all applicable provisions of the Food Employee Certification Act, 3 Pa.C.S.A. § 6501 et seq., and the regulations promulgated pursuant thereto by the Pennsylvania Department of Agriculture, 7 Pa. Code § 46.1 et seq., as amended from time to time, including, but not limited to, employing a supervisory employee who has successfully completed a food employee certification approved training program or successor program. Vendors must present proof of certification when applying for a license. Any violation of the provisions of the Food Employee Certification Act or the related regulations shall constitute a violation hereunder.
- G. Food Code. All cart and truck vendors who offer natural products for sale shall comply with all applicable provisions of the Food Code issued by the Pennsylvania Department of Agriculture, 7 Pa. Code § 46.1 et seq., as amended from time to time. Any violation of the provisions of the Food Code shall constitute a violation hereunder.

SECTION 4. Vending Cart and Vending Truck Standards.

- A. Maintenance. All vending carts and vending trucks shall at all times be maintained in good condition and repair. Any repairs to or replacements of vending carts or vending trucks shall comply fully with the existing design criteria, standards and specifications. No replacement cart or truck may be placed into operation until approved by the Health Officer.
- B. Carts self-contained. All vending carts shall be so designed that all sales activities, including trash disposal facilities, can be conducted totally from the vending cart. Use of the sidewalk by a cart vendor for product display, storage or trash

receptacle location shall be prohibited. Vending trucks are prohibited from using sidewalks and streets as a location for trash receptacles or product display.

- C. Signs. Signs to include an identification of the cart vendor or truck vendor are permitted. Any merchandise listings must be professionally painted or handwritten on an attractive removable chalk or marker board or similar structure.

SECTION 5. Cart vending and truck vending operation standards.

- A. Days and hours of operation. Cart vending and truck vending sales may be conducted daily during such hours as may be prescribed in the regulations promulgated hereunder or established by the owner of the site where the vending sales are conducted.
- B. Daily removal. Vending carts and vending trucks shall be removed from the cart vending and truck vending location daily no later than 8:00 p.m. and not returned thereto until the times as may be prescribed for cart or truck breakdown or setup, as the case may be, in the regulations promulgated hereunder or established by the owner of the site where the vending sales occur.
- C. Safe and sanitary condition. Vending carts and vending trucks shall be maintained in a safe, clean and sanitary condition at all times. Vending carts and vending trucks licensed hereunder to sell food products shall:
 - (1) Be subject to inspection at any time by the Borough Manager and/or his/her designated agent.
- D. Quiet operations. Cart vendors and truck vendors shall conduct business in an orderly fashion and shall not make loud or raucous noises or use sound-amplifying devices to attract attention nor verbally hawk or solicit product sales to pedestrians or motorists.
- E. Use and maintenance of sidewalk. All sales and related activity shall be conducted from the vending cart or vending truck, during which times the vending cart or vending truck shall not be moved from the assigned cart vending or truck vending location. No products shall be stored or displayed, nor trash receptacles placed, on the sidewalk or any adjacent area outside the approved vending area. The sidewalk in the immediate vicinity of the vending cart or vending truck shall be kept and maintained by the cart vendor or truck vendor free of trash, litter, debris or spillage

generated by the vendor's vending cart or vending truck. Trash must be removed from the site on a daily basis by the vendor. Tables or other pedestrian obstructions are prohibited.

SECTION 6. License application and selection for cart or truck vending.

A. The application for a vendor's license shall include the following information:

- 1.) The name, home and business address of the applicant, and the name and address of the owner, if other than the applicant, of the cart to be used in the operation of the vending business.
- 2.) A description of the type of food, beverage or merchandise to be sold.
- 3.) A list of the proposed location or locations of the vending cart for which license is sought.
- 4.) A description and photograph or drawing of the cart or truck proposed to be used.
- 5.) The location and description of off-street cart or truck storage facilities.
- 6.) The method and routes for transporting the cart and/or truck to and from the sidewalk location or other location and storage facilities.
- 7.) The names, addresses and percentage of stock owned by shareholders in a corporate applicant and the percentage interest of each partner in a partnership applicant.
- 8.) Copy of insurance policy or binder.
- 9.) Such information as the applicant may choose or may be requested by the Borough.

B. Review of applications. The Borough Manager or his/her Designated Agent ("Designated Agent") shall complete the review of all applications filed and notify the applicants of the results thereof, in writing, within 60 days of receiving a complete application.

- (1) An application shall be denied and the applicant ineligible to receive a cart vending or truck vending license if:
 - (a) The application is incomplete in any material respect.
 - (b) The proposed vending cart does not comply with the cart design criteria, standards or specifications and/or applicable health codes, or if the proposed vending truck does not comply with the standards or specifications and/or applicable health codes.

(c) The applicant, or any natural person having not less than a thirty-three-percent interest in the entity making application, has:

- [1] An interest in another cart vending or truck vending license;
- [2] Within the past five years held or had an interest in a cart vending or truck vending license that had been revoked;
- [3] Any tax liability being more than -10 days overdue; or
- [4] Within the past 10 years been convicted of selling offering to sell or possession with intent to sell a controlled substance.

(2) If an application is denied, the applicant shall be notified, in writing of the reason therefor.

SECTION 7. Suspension or revocation of license for cart or truck vending.

A. Grounds. A cart vending or truck vending license shall be subject to suspension or revocation by the Designated Agent for any of the following causes:

- (1) The violation of any provision of this article, the regulations promulgated hereunder or the orders of the Designated Agent issued pursuant thereto;
- (2) Where the license holder has knowingly made a false, misleading or fraudulent statement of material fact in the application for a license;
- (3) When the license holder fails to pay the license renewal fee within 10 days of the annual anniversary date of license issuance; or
- (4) When the cart or truck vendor violates the provisions of or fails to maintain any license or permit required by any applicable state health codes.
- (5) The practice of fraud, deceit, misrepresentation or furnishing false information in the course of carrying on the licensed business.
- (6) Conviction of certain crimes: if any licensee is convicted of robbery, burglary, theft, receiving stolen goods or any other crime involving the unlawful obtaining of personal property.

B. Procedure, notice and hearing.

- (1) Prior to the suspension or revocation of a cart vending or truck vending license becoming effective, the Designated Agent shall notify the licensee, in writing, of the suspension or revocation, the reasons therefor, his right to a hearing before the

Designated Agent if desired and that unless a request for a hearing is filed in writing within 15 days of the date of the notice of suspension or revocation, the suspension or revocation shall then become effective without further action. Such notice shall be served upon the licensee by delivering the same personally or by registered mail, postage fully prepaid, addressed to the licensee at his or her place of business or residence as shown on the license application.

- (2) If a hearing is requested before the Designated Agent, it shall be conducted by the Designated Agent or his designee within 10 days of the request and shall be conducted in accordance with the Local Agency Law (2 Pa.C.S.A. § 105). If following the hearing the suspension or revocation is upheld, the reasons therefor shall be set forth in writing and delivered to the licensee by ordinary mail. A decision upholding or sustaining the suspension or revocation shall result in such suspension or revocation becoming effective and not subject to further stay except upon order of court.

SECTION 8. Appeals to Borough Council; fee.

A. Time and manner. Within five days after the date of denial of an application for a vending or truck vending license by the Designated Agent or within 30 days after action by the Designated Agent suspending or revoking a cart vending or truck vending license being final, any person so affected may appeal such act to the Borough Council by filing a notice of appeal, in writing, with the Health Officer, setting forth the specific grounds upon which the appeal is based, together with an appeal fee of \$100.00.

B. Hearing and decision. Upon the filing of an appeal, the Designated Agent shall set a time and place for hearing before the Borough Council and shall notify the appellant thereof. The hearing shall be set within the number of days of the filing of the appeal as follows: from a denial of an application for a vending license, five days; from action of Designated Agent suspending or revoking a license becoming final, 30 days. The hearing shall be conducted in accordance with the requirements of the Local Agency Law (2 Pa.C.S.A. § 105). The appellant and any other interested party shall be given a reasonable opportunity to be heard in order to show cause why the determination of the Designated Agent should not be upheld. In all cases, the burden of proof shall be upon the appellant to show that there was no substantial evidence to support the decision of the Designated Agent. The decision of the Borough Council shall be in writing and shall state the reasons therefor.

C. Appeal not a stay. The filing of an appeal hereunder shall not operate to stay the action or decision of the Health Officer which is the subject of the appeal.

SECTION 9. Promulgation of regulations.

The Borough Manager and his/or Designated Agent may promulgate such regulations as are necessary for the proper administration and enforcement of this article. Before becoming effective, any such regulations shall be approved by resolution of the Borough Council and thereafter shall be available for public inspection.

SECTION 10. Enforcement; modification of privileges during special events; zoning exemption.

- A. This article shall be enforced by the Borough Manager or Mayor or the Borough Manager's designated agent.
- B. During officially sanctioned special events in the Borough, privileges of sidewalk vendor licenses as well as cart and truck vendor licenses issued by the Borough may be modified at the discretion of the Borough Manager and/or Designated Agent when conflicts of location arise between the vendor and the special event presentation.
- C. Cart vending and truck vending authorized under the provisions of this article and located on property designated by resolution of Borough Council shall be exempt from Borough of Lehigh Zoning Review and approval.

SECTION 11. Violations and penalties.

- A. Any person violating any provisions of this article or of the regulations promulgated hereunder shall, upon conviction thereof in a summary proceeding be sentenced to pay a fine of not less than \$100 nor more than \$600 for each and every offense, to be collected as other fines and costs are by law collectible, or shall be imprisoned for not more than 90 days, or both. Each day during which any person violates any provisions of this article shall constitute a separate offense.
- B. Institution of a prosecution for the imposition of the foregoing penalty shall not be construed to limit or deny the right of the Borough to such equitable or other remedies as may be allowed by law.

ENACTED and ORDAINED this 26th day of June 2017 by the Council of the
Borough of Lehigh, Carbon County, Pennsylvania.

BOROUGH OF LEHIGH


GRANT HUNSICKER, President

ATTEST:


BRENDA KOONS, Secretary

Examined and approved this day of June 2017.

THOMAS MASE, Mayor