

WHITPAIN TOWNSHIP

ORDINANCE NO. 417

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF WHITPAIN AT PART II [GENERAL LEGISLATION] AMENDING CHAPTER 104 [MOBILE FOOD VENDORS] TO REVISE REGULATIONS FOR THE OPERATION OF MOBILE FOOD VENDORS

CERTIFICATION

I, ERIC TRAUB, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT I AM THE TOWNSHIP MANAGER IN WHITPAIN TOWNSHIP, MONTGOMERY COUNTY, PA AND THAT ATTACHED HERETO IS A TRUE AND COMPLETE CORRECT COPY OF ORDINANCE NO. 417.



Eric Traub, Township Manager

Aug 21, 2024

ENACTED: 8-20-24

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WHEREAS, The Board of Supervisors of Whitpain Township is duly empowered by the Second Class Township Code, 53 P.S. § 65101, *et seq.*, to enact certain regulations relating to the public health, safety, and welfare of the residents of Whitpain Township;

WHEREAS, Mobile Food Vendors provide a distinct service and business model to the residents and businesses of Whitpain Township which requires specific regulation and oversight to ensure safe and orderly operation;

WHEREAS, The Second Class Township Code authorizes the Board of Supervisors to make, amend and adopt amendments to the Whitpain Code of Ordinances, as amended, that are consistent with the Constitution and laws of the Commonwealth that it deems necessary for the proper management and control of the Township and the best interests of its residents; and

WHEREAS, The Board of Supervisors of Whitpain Township have determined that certain amendments to the Whitpain Township Code of Ordinances, as amended, are required for the orderly administration of the laws of Whitpain Township.

NOW, THEREFORE, IT IS HEREBY ENACTED AND ORDAINED by the Whitpain Township Board of Supervisors that the Township's Code is amended as follows:

SECTION 1. Creation of Chapter 104.

The Code of the Township of Whitpain, Part II [General Legislation], Chapter 104 [Mobile Food Vendors] is hereby restated and amended to delete the struck-through language (~~example~~) and add the underlined language (example) as follows:

§ 140-1. Definitions.

HOST BUSINESS

Any business or institution operating with a physical location in Whitpain Township that obtains a permit to allow a Mobile Food Vendor to operate under its supervision.

MOBILE FOOD UNIT

Any motorized or non-motorized vehicle, including but not limited to food trucks, carts, stands, kiosks, any other device designed to be portable and not permanently attached to the ground and ancillary equipment from which food products are intended to be prepared, sold, and/or distributed, including pre-packaged foods.

MOBILE FOOD VENDORS

An individual or organization engaged in the operation of a Mobile Food Unit.

§ 140-2. Scope and Intent.

The provisions of this Chapter apply to Mobile Food Vendors and a Host Business, as applicable, engaged in the business of cooking, preparing, and distributing food or beverage with or without charge in public and/or private restricted spaces. This Chapter shall not apply to vehicles that dispense food that move from place-to-place and are not stationary in the same location for more than fifteen (15) minutes at a time, such as ice cream trucks, pushcarts, or stands located on sidewalks.

§ 140-3. General Regulations.

- A. Permits, as provided in this Chapter, shall be required to located and operate a Mobile Food Unit, as defined in this Chapter, within Whitpain Township.
- B. A Mobile Food Vendor or Host Business shall obtain and maintain insurance as outlined in Section 140-6 of this Chapter.
- C. A Mobile Food Vendor shall receive and obtain written permission from the property owner on which the Mobile Food Vendor intends to operate a Mobile Food Unit.
- D. Permitted Locations of Operation.
 - (1) Mobile Food Vendors and Mobile Food Units shall only be permitted to operate under a Host Business Permit or Single Event Permit in the AR – Administrative and Research, AR-1 – Administrative and Research, R-E – Research and Engineering, I – Light Industrial, IN – Institutional, R-6 – Agricultural/Rural Residence, and R-8 Residential Zoning Districts and the Parks and Recreation Overlay.
 - (2) Mobile Food Vendors shall be permitted to operate under a Single Event Permit on private residential property located in any Zoning District, at the request of the owner, for a private event for a duration of four (4) hours or less, exclusive of set-up and

breakdown which shall be limited to one (1) hour before and after operation.

- E. A Mobile Food Unit shall operate on private property only and shall not be permitted to operate within a public right-of-way.

§ 140-4. Permits.

- A. Permits shall be issued for a period not to exceed one (1) year.
- B. Permits are required to be renewed prior to the expiration date.
- C. Permits are not transferrable.
- D. Permits shall be conspicuously displayed as viewed by the customer.
- E. Operation of any Mobile Food Unit requires two (2) permits: 1) Location Permit and 2) Mobile Food Unit Permit.
- F. Location Permit. Two (2) types of Location Permit shall be available:
 - (1) Host Business Permit.
 - (a) A Host Business may obtain a permit for Mobile Food Vendors to operate under its supervision.
 - (b) A Host Business Permit is only valid for the operation of Mobile Food Units on the premises of the Host Business Permit holder, provided the premises is located in a Zoning District enumerated in § 140-3.D.
 - (c) A Host Business shall be responsible for ensuring that all requirements of this Chapter are fulfilled.
 - (d) No more than five (5) Mobile Food Vendors shall be permitted to operate at any one (1) time under a Host Business Permit.
 - (2) Single Event Permit.
 - (a) A Single Event Permit shall be available for Mobile Food Vendors to operate a Mobile Food Unit in any Zoning District enumerated in § 140-3.D or as provided by §§ 140-3.D(1) on a specific date or for a specific occasion.
- G. Mobile Food Unit Permit.

- (a) A Mobile Food Unit Permit permits a Mobile Food Vendor to operate a Mobile Food Unit in any Zoning District enumerated in § 140-3.D.
- (b) The permit holder shall be responsible for ensuring that all requirements of this Chapter are fulfilled.
- (c) Two (2) types of Mobile Food Unit Permit shall be available:
 - [1] Food Truck. A Mobile Food Unit – Food Truck Permit is required for all mobile food units capable of on-site food preparation, including Mobile Food Facility Types 3 and 4, as defined by the Commonwealth of Pennsylvania Department of Agriculture.
 - [2] Food Cart. A Mobile Food Unit – Food Cart Permit is required for all mobile food units offering prepackaged or dispensed food and beverage, including Mobile Food Facility Types 1 and 2, as defined by the Commonwealth of Pennsylvania Department of Agriculture.

H. Application for Permit.

- (1) A Host Business or Mobile Food Vendor desiring to provide for the operation of or operate a Mobile Food Unit in Whitpain Township shall submit complete and truthfully-stated applications.
- (2) All applications shall be accompanied by any fee, as established by resolution of the Whitpain Township Board of Supervisors.
- (3) All Location Permit applications shall include a site plan showing the proposed location of operation.
 - (a) All site plans shall provide for the following:
 - [1] All site plans shall be drawn to scale.
 - [2] The proposed area of operation shall be an all-weather surface, unless otherwise approved by the Township Engineer.
 - [3] The proposed area of operation, all walkways, buildings, hydrants, accessible routes, fire lanes, and regulatory signage shall be shown on the site plan.
 - [4] The proposed area of operation shall not block any regulatory signage.

- [5] The proposed area of operation shall not interfere with any areas of clear sight distance.
 - [6] The proposed location of trash receptacles, as required by § 140-5.A shall be shown.
 - [7] If the use of a generator that is not integrated into the Mobile Food Unit is proposed, the proposed location of the generator shall be shown.
- (b) All site plans shall be to the satisfaction of the Township Engineer and Fire Marshal.
- (4) All applications must include proof of insurance in the form of a certificate of insurance which names Whitpain Township as an additional insured party, as required by this Chapter.
 - (5) All applications shall include written permission from the property owner on which the Mobile Food Vendor intends to operate a Mobile Food Unit.
- I. Other licenses or permits. A permit obtained under this Chapter shall not relieve any Mobile Food Vendor of the responsibility of obtaining any other permit or authorization required by any other resolution, ordinance, statute, or administrative rule, including outside agency permits.

§ 140-5. Performance Regulations.

- A. Mobile Food Vendors are responsible for providing receptacles for trash and recycling within five feet (5') of their operating location. Mobile Food Vendors and/or Host Business shall be responsible for servicing such receptacles. Any costs incurred by the Township by the Mobile Food Vendor or Host Business's failure to service or dispose of such receptacles or refuse shall be assessed to the responsible party.
- B. Mobile Food Vendors may not sell or offer for sale any product or service:
 - (1) Within fifteen feet (15') of a fire hydrant.
 - (2) Within fifteen feet (15') of any building.
 - (3) Within fifty feet (50') of any air intake for a building.
- C. Mobile Food Units may not block any regulatory signage.
- D. Mobile Food Units may not interfere with any areas of clear sight distance.

- E. Mobile Food Units may not block any vehicular or pedestrian passageways or areas of ingress/egress.
- F. All noise must comply with the provisions of §§ 83-1 through 83-5.
- G. Mobile Food Vendors may operate between the hours of 7:00 AM and 9:00 PM, exclusive of set-up and breakdown which shall be limited to one (1) hour before and after operation.
- H. All Mobile Food Units shall be removed from the premises no later than 10:00 PM, unless written permission has been obtained from the property owner or Host Business to permit overnight parking.
- I. Mobile Food Units shall not be permitted to park in a residential area overnight, subject to the provisions of § 160-208.A.
- J. Mobile Food Units shall provide operational and regularly-inspected fire suppression equipment to the satisfaction of the Fire Marshal.

§ 140-6. Insurance Requirements.

- A. Mobile Food Vendors shall purchase and maintain the following insurance coverages at not less than the limits specified below or required by law, whichever is greater:

- (1) Commercial general liability insurance or its equivalent for bodily injury, personal injury and property damage including loss of use, with minimum limits of:

\$1,000,000 each occurrence;
 \$1,000,000 personal and advertising injury;
 \$1,000,000 general aggregate; and
 \$1,000,000 products/completed operations aggregate.

This insurance shall include coverage for all of the following:

- (a) Liability arising from premises and operations;
- (b) Liability arising from the actions of independent contractors; and
- (c) Contractual liability including protection for the Mobile Food Vendor from bodily injury and property damage claims arising out of liability assumed under this contract.

- (2) Business auto liability insurance or its equivalent with a minimum limit of \$1,000,000 per accident and including coverage for all of the following:

(a) Liability arising out of the ownership, maintenance or use of any auto (if no owned autos, then hired and non-owned autos); and

(b) Automobile contractual liability

(3) If the Mobile Food Vendor has any employees, workers compensation insurance or its equivalent with statutory benefits as required by any state or Federal law, including 3 standard "other states" coverage; employers liability insurance or its equivalent with minimums as required by Pennsylvania law. ~~minimum limits of:~~

~~\$1,000,000 each accident for bodily injury by accident;
\$1,000,000 each employee for bodily injury by disease; and
\$1,000,000 policy limit for bodily injury by disease.~~

(4) ~~Umbrella excess liability or excess liability insurance~~ Errors and omissions liability insurance covering any Mobile Food Vendor operating under a Host Business Permit for liability for loss or damage due to an act, error, omission or negligence or its equivalent with minimum limits of:

~~\$1,000,000 per occurrence; and
\$1,000,000 aggregate for other than products/completed operations and auto liability; and
\$1,000,000 products/completed operations aggregate~~

~~and including all of the following coverages on the applicable schedule of underlying insurance:~~

- ~~(a) Commercial general liability;~~
- ~~(b) Business auto liability; and~~
- ~~(c) Employers liability.~~

B. Whitpain Township and the Township's insurer and their members, elected officials, trustees, officers and employees shall be named as additional insureds on the Mobile Food Vendor's commercial general liability insurance and umbrella or excess liability insurance with respect to liability arising out of the services provided under any permit issued by the Township.

C. Insurance or self-insurance provided to Whitpain Township and the Township's insurer and their members, elected officials, trustees, officers and employees under any Mobile Food Vendor's liability insurance or self-insurance required herein shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of insurance or self-insurance. (Any cross suits or cross liability exclusion shall be deleted from the Mobile Food Vendor's liability insurance policies required herein.)

- D. Insurance or self-insurance provided to Whitpain Township and the Township's insurer and their members, elected officials, trustees, officers and employees as specified herein shall be primary, and any other insurance, self-insurance, coverage or indemnity available to Whitpain Township and the Township's insurer and their members, trustees, officers and employees shall be excess of and non-contributory with insurance or self-insurance provided to the Township and the Township's insurer and their members, trustees, officers and employees as specified herein.

- E. A Host Business is permitted to maintain the required insurances on behalf of a Mobile Food Vendor operating under a Host Business Permit provided the Host Business names the Mobile Food Vendor as an additional insured, in addition to the Township and the Township's insurer, and fulfills all other requirements of this section.

§ 140-7. Indemnification.

To the fullest extent permitted by law, by application for a permit under this Chapter, a Mobile Food Vendor agrees to defend, indemnify, pay on behalf of, and save harmless Whitpain Township, their trustees, elected officials, officers and employees against any and all claims, liability, demands, suits or loss, including attorneys' fees and all other costs connected therewith, arising out of or connected to the services provided by Mobile Food Vendors for activities associated with their operation in the Township. The Mobile Food Vendor's obligation to defend and indemnify shall survive the termination of the permit.

§ 140-8. Enforcement and Penalty.

- A. Any person who violates any provision of this section shall be guilty of a summary offense.

- B. Upon issuance of a citation for a violation, the permit under which the Mobile Food Vendor operates shall be suspended and all operations shall cease.

- C. For every such violation, upon conviction, shall be sentenced to pay a fine of not less than \$250 nor more than \$1,000, and the costs of prosecution, and, in default of payment of fine and costs, to undergo imprisonment for not more than ninety (90) days.

- D. Upon conviction or guilty plea, a permit shall not be issued to the same entity for a period of one (1) year.

SECTION 2. Repeal and Ratification.

All ordinances or parts of ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed. Any other terms and provisions of the Township's Code unaffected by this Ordinance are hereby reaffirmed and ratified.

SECTION 3. Severability.

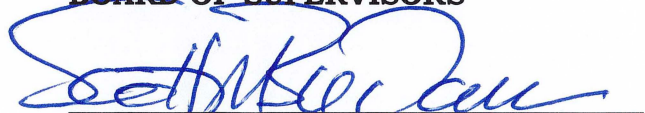
Should any section, paragraph, sentence, clause, or phrase in this Ordinance be declared unconstitutional or invalid for any reason, the remainder of the Ordinance shall not be affected thereby and shall remain in full force and affect, and for this reason the provisions of this Ordinance shall be severable.

SECTION 4. Effective Date.

This Ordinance shall become effective 5 days after enactment.

ORDAINED AND ENACTED this 10th day of August 2024, by the Whitpain Township Board of Supervisors.

**WHITPAIN TOWNSHIP
BOARD OF SUPERVISORS**


SCOTT M. BADAMI, *Chair*

[Seal]

Attested by:


SARA S. SELVERIAN, *Assistant Secretary*