

ORDINANCE NO. 2023-3378

**TOWNSHIP OF MIDDLETOWN
COUNTY OF MONMOUTH**

**AN ORDINANCE PERMITTING AND LICENSING ITINERANT
RETAIL FOOD HANDLING ESTABLISHMENTS**

WHEREAS, the Township of Middletown (the “Township”) has authority to regulate land uses within its municipal boundaries under the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. and police powers under N.J.S.A. 40:48-1, et seq.; and

WHEREAS, the Township has the authority to regulate retail food-handling establishments, providing for the inspection of such establishments and fixing penalties for violations is hereby established pursuant to N.J.A.C. 8:24, Sanitation in Retail Food Establishments and Food and Beverage Vending Machines; and

WHEREAS, the Bureau of Fire Prevention has the authority to enforce the Uniform Fire Safety Act and the NJ Uniform Fire Code to all buildings, structures and premises covered under said provisions within the Township pursuant to N.J.A.C. 5:70; and

WHEREAS, The Department of Health and Bureau of Fire Prevention have set forth inspection requirements with associated fees and permitting of Itinerant Retail Food Handling Establishment.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Middletown in the County of Monmouth, State of New Jersey, that the Code of the Township be and is hereby amended and supplemented, as follows:

SECTION 1. Itinerant Retail Food Handling Establishments.

The following Code provisions shall govern the permitting and operation of all Itinerant Retail Food Handling Establishments operating within the Township.

SECTION 2. Purpose

The purpose of this chapter is to protect the public’s health and general welfare by licensing and regulating Itinerant Retail Food Handling Establishments.

SECTION 3. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

BASE OF OPERATIONS - A permanent fixed facility that is currently licensed as a retail or wholesale food establishment and is currently under a Satisfactory Rating by any Local or State Health Authority in New Jersey.

ITINERANT RETAIL FOOD HANDLING ESTABLISHMENT - Any food establishment/vendor that is temporary or mobile in nature that is not a permanent fixed facility.

MOBILE CLASS A - Any food vendor that parks and operates at the location of an existing business or a park subject to appropriate approvals. The mobile unit must be self-contained (sinks, water, wastewater, power, etc.), have a base of operations and meets all aspects of N.J.A.C. 8:24.

MOBILE CLASS B - Any food vendor that operates along routes throughout the township borders. The mobile unit must maintain mobility, only stopping to serve customers, after being flagged down or pulling into a facility where customers come out to be served. The vehicle may only stand while serving those customers and must continue on their route immediately after serving the last customer. At no time will the stoppage be more than 15 minutes. The mobile unit must have a base of operations and meet all aspects of N.J.A.C. 8:24.

TEMPORARY FOOD OPERATOR - Any food vendor that continually operates for a specific amount of time; day one of the event and consecutive days up to the final day of the event, not to exceed 6 consecutive days, and meets all aspects of N.J.A.C. 8:24. All food must be prepped and cooked onsite or at a licensed retail/wholesale facility.

SPECIAL FIRE PERMIT - Permit received via application for special fire inspection as per N.J.A.C. 5:70. The permit for Itinerant Retail Food Handling Establishments is valid for one day, up to and not to exceed 6 consecutive days of operation where the establishment remains on site. The permit is not valid for intermittent days of operation during the timeframe of application.

SECTION 4. Application and License/Permit Required

No person or entity shall maintain or operate an Itinerant Retail Food Handling Establishment without obtaining the following.

- A. Zoning permits are required for Mobile Class A vendors, and may be required for other types. Development Permit Applications are available at the Township Building Department.

- B. A *Mobile/TFE License*. Applications are available at the Township Health Department.
- C. A *Special Fire Permit*. Applications are available at the Township Fire Prevention Bureau.

SECTION 4. Requirements.

- A. Written permission from property owner, specifying date(s) of operation.
- B. Separate containers for the proper disposal of both garbage and recycling; and removal of same.
- C. May require additional review and information at the request of the fire official to ensure no traffic hazard or parking stalls are obstructed at the site.
- D. Mobile Class A vendors must notify the Department of Health of the location a minimum of 3 days prior to start of operation.

SECTION 5. Prohibitions.

- A. All foods served by itinerant retail food handling establishments must be prepared onsite and/or at a base of operations. No home prepared foods may be served or given away unless otherwise specifically permitted by law.
- B. Mobile Class A vendors may not operate on any property that fronts along the following roadways:
 - i. State Hwy #36
 - ii. State Hwy #35
 - iii. Middletown-Lincroft Road
 - iv. Route 520/Newman Springs Road.
- C. Mobile Class A vendors may not operate within 1,000 feet from any property line containing an establishment with a Retail Food Handlers License.
- D. Mobile Class B vendors must maintain mobility. The vehicle may only stand while serving customers and must continue their route immediately after serving the last customer. At no time will the stoppage be more than 15 minutes.

- E. No Itinerant Retail Food Establishment may operate in any fire zone or fire lane as established in § 254-9 of the Township code, or interfere with traffic flows, parking spaces or in any way cause a traffic hazard.
- F. No Itinerant Retail Food Establishment may operate on any vacant lot.
- G. Itinerant Retail Food Handling Establishments at private parties shall not operate without first obtaining a permit from the Middletown Township Police.
- H. No Itinerant Retail Food Establishment may operate on any Township property without the prior written approval, permitting, and inspection procedure from the Township.

Section 6. Suspension and revocation of license and/or permit.

Any license and/or permit issued hereunder may be suspended by the Township for any infraction or violation of the terms of the license and/or permit, or any of the Township ordinances or state and federal statute, or falsification in applying for a license and/or permit. The suspension shall become effective immediately and shall state that opportunity for a hearing will be given at a time, within 16 days from date of notice, before the Township Committee, which, upon a finding of such violation, may revoke the license, and, in event of failure of the licensee to appear, the license shall automatically be revoked and canceled.

SECTION 7. Violations and penalties.

Any person adjudicated as having violated any provision of this chapter shall be subject to the penalties in Chapter 1, General Provisions, § 1-4, of this Code.

SECTION 8. [Amendment of Chapter 240 Governing] Fees for Itinerant Retail Food Handling Establishments

- A. General licensing fee for Itinerant Retail Food Handling Establishments
 - a. Health Department Fees
 - i. Mobile Food Class A \$300 per calendar year
 - ii. Mobile Food Class B \$125 (old term “mobile food handler”) per calendar year
 - iii. Temporary Food Handlers see § 240-24G (4) (5) of the Township Code
 - iv. Reinspection fee for conditional or unsatisfactory rating
 - 1. First occurrence within two-year period: \$100
 - 2. Second occurrence within two-year period: \$200
 - 3. Third occurrence within two-year period: \$500

- b. Fire Prevention Bureau Fees
 - i. \$54 Type 1 special permit fee as per N.J.A.C. 5:70
 - ii. \$100 weekday (during the hours of 8:00AM – 4:00PM) inspection fee
 - iii. \$175 weekends/holiday inspection fee, or after hours
 - iv. \$50 reinspection fee

SECTION 9. No Transfer or Assignment

All licenses and/or permits issued under this section are non-transferable to any other vendor, location, date, event, etc.

[SECTION 10. Severability.

If any section, subsection or paragraph of this ordinance be declared unconstitutional, invalid or inoperative, in whole or in part, by a court of competent jurisdiction, such chapter, section subchapter or paragraph shall to the extent that is not held unconstitutional, invalid or inoperative remain in full force and effect and shall not affect the remainder of this ordinance.

SECTION 11. Repealer.

All ordinances and resolutions, and parts of ordinances and resolutions which are inconsistent with provisions of this ordinance shall be, and are hereby, repealed to the extent of any such inconsistency.

SECTION 12. Effective Date.

This ordinance shall take effect immediately after final adoption and approval pursuant to law.]