

**MINUTES OF THE HEALTH & HUMAN SERVICES COMMITTEE**  
**March 4, 2019**  
**East Conference Room**

**Present:** Councilmembers Litten, George, Anderson

**Also Present:** Councilmembers Bullock, Rader, & O’Leary, Director Gelsomino, Clerk Bach, Law Director Butler, City Planner Nochta, Fire Chief Gilman, Patrick Siegel owner of Robusto & Briar, Attorney Tom Corrigan (representing Robusto & Briar), Terry Alan, Rick Novickis, Suzanne Hrusat, Ashley Takash (all representatives from the Cuyahoga County Board of Health), and Deputy Clerk Lascu taking minutes

**Call to Order:** 6:05 p.m.

**ORDINANCE NO. 44-18 - AN ORDINANCE enacting Chapter 743, Mobile Food Service Operations, of the Lakewood Codified Ordinances to establish regulations on food trucks operating within the City. (Placed on 1st reading & referred to HHS Committee 11/5/18; 2nd reading 11/19/18)**

**ORDINANCE 76-18 - AN ORDINANCE to take effect at the earliest period allowed by law, enacting Chapter 1727, Cigarette and Tobacco Vendors; Sales to Persons Under 21, of the Codified Ordinances of the City of Lakewood in order to amend and create regulations involving licensing for and sales of tobacco products. (Placed on 1st reading & referred to HHS 12/17/18; 2nd reading 1/7/19)**

Councilman Litten opened the meeting with brief introductions of attendees and deferred to Councilwoman George to speak on the mobile food truck ordinance she sponsored.

Councilwoman George stated that she met with the mayor and they concluded that a food truck should be assessed a \$150 annual application fee if its food operations are based outside the city/does not have a brick and mortar store in the city and a \$50 annual application fee if it does have a brick and mortar store based in the city. The permit will be valid for a calendar year from January 1 to December 31, to ensure efficient administrative management. The permitting period would not start until 2020.

Suzanne Hrusat from the Cuyahoga County Board of Health sought clarification on whether the ordinance intended to require someone in the food truck be certified in food protection and have food safety training. Councilwoman George confirmed that it is the intent. Ms. Hrusat pointed out the complex nature of the food safety codes on the local level and suggested the ordinance state that a food truck operator must operate in accordance with the Ohio Food Safety Code. She also offered to provide example legislation crafted by Cuyahoga County Board of Health staff. Councilwoman George was receptive to making changes in the legislation. Ms. Hrusat also suggested that the word “mobile” be added to the licensing requirement component of the ordinance, in order to prevent a brick and mortar business from using their license in a mobile

food truck capacity. She also suggested that the term “food service operation” be included in the legislation along with retail food operations because either type of establishment can have a food truck. Lastly, she asked if 1 brick and mortar business can have as many mobile food trucks as it wants under the \$50 application fee or would it be per truck? George stated the application fee applies per truck, but they can have as many trucks as they want.

Councilwoman George requested that Law Director Butler make the recommended changes to the ordinance and that the language be altered to reflect that a mobile food truck permit is valid for the calendar year in which it was purchased. Ms. Hrusat also recommended that a provision that requires a food truck to apply a certain number of days before they operate to give time for the city to get its inspectors out to examine the operation. The Board of Health usually suggests 10 days. Chief Gilman and Councilwoman George approved of the suggestion. Councilman O’Leary suggested installing a permissive provision in that part of the ordinance so that way a business could apply if they are needed on short notice at a community event. This language would allow the city the flexibility to get the inspection done.

Councilman Anderson asked Law Director Butler what type of offense a violation would fall under in the city code if a vendor did not comply with the required permitting process. Director Butler stated that it would be a criminal offense in nature.

Councilman Litten tabled the discussion on the ordinance to allow for the changes to be made.

In regard to Ordinance 76-18, Director Butler gave an overview of major changes to the ordinance. These changes involved removing criminal prosecution from the list of enforcement remedies to bring it in line with civil means of enforcement and a section was added that the mayor may enter into agreement with the Cuyahoga County Board of Health to act as the permitting agent, which other cities are doing as well. Director Butler made a third change after having a conversation with Police Chief Malley. The city has not enforced existing criminal code sections to prohibit the sale of tobacco to minors. There have been citations issued to minors for using tobacco (those were done under state code) and citations to store owners for selling to minors, however these citations were issued by state agents, not local police officers. Section 5214 of the code regarding sales of tobacco to minors was eliminated to reflect the civil means of enforcement being proposed in Ordinance 76-18.

Mr. Siegel of Robusto & Briar asked if they are reflective of federal code. He stated that there were changes to the Food and Drug Administration code last August. Director Butler replied that the changes in front of the committee today have nothing to do with the federal code. Director Butler left the meeting momentarily to make alterations to the mobile food truck ordinance.

Councilman O’Leary asked since the city doesn’t routinely enforce its code, have the police ever had difficulty getting state agents to come into the city and enforce criminal provisions in a timely manner. It doesn’t hurt to have the extra provision if we may need it in the future. Mr.

Terry Alan of the Cuyahoga County Board of Health noted that the state agents enforce state law, which currently has a smoking age of 18, so it's worth considering.

Rick Novickis of the Cuyahoga County Board of Health gave an overview of how the city of Euclid has been implementing its Tobacco 21 law. The city has 100% compliance in regards to permits and signage. Stores either made new signage or altered existing signage. Some stores have also already altered cash registers to require ID for tobacco purchases. The Lakewood template is nearly identical to other successful ones that have passed on the local level of government. Wendy Hyde of the Preventing Tobacco Addiction Foundation added that other proposals on the local level in other parts of the state look similar to Lakewood's.

Councilman Rader asked if there are any financial concerns for the city in passing this ordinance. Mr. Novickis replied that the Board of Health would be responsible for permitting, having informational meetings for businesses, and conducting outreach. Business owners must be made aware that they are ultimately responsible for following the laws of a community. Clerks at stores need to realize that they may be risking their jobs if they are routinely selling to individuals under the age of 21. The Board won't be doing any permitting until the end of the year at the soonest. The \$100 permits that the County Board of Health (BOH) will be issuing are not funding the program, so this is not a money grab. The County has partnered with Euclid to post banners at baseball parks that warn of Tobacco 21. The Board is willing to partner with anyone to help promote the initiative. Mr. Alan added that 2% of tobacco sales are to 18-21 year olds. Only 5% of people start smoking after age 21. Over a 3 year period, BOH found that when they check, sales to youth reduced by 8%. If you check, people will stop selling. Tobacco 21 is becoming a national movement.

Ms. Hyde stated we have rates of addiction that we haven't seen since the 1990s. Smokers may be unemployable in the future, as Cleveland Clinic and other businesses have chosen not to fire you if you use a nicotine product. She also stated that it costs \$6,000 more a year to employ a tobacco user. It is difficult for people to quit if they started in high school.

Councilman Anderson asked if they have seen examples of carve outs for a specialty business anywhere in the county. Mr. Alan stated he has not and does not know of any. Anderson asked if Juul or other vapes weren't available to someone as a teen, how does one ween them off tobacco products. Litten and Ms. Hyde state they are not an approved cessation method. Alan stated nicotine patches are available. The nicotine concentration in 1 Juul pod has the same amount as in 1 pack of cigarettes. There is a possibility that it be a driver of multiple tobacco product use.

Councilwoman George asked if the humidor in Robusto & Briar is not permitted and if it isn't, why. Councilman Litten stated the owners can address that in the public comment section.

Mayor Summers announced that 100 people involved in health care will be meeting tomorrow to discuss the non-clinical determinants of health. He invited all to attend.

Councilman Litten initiated the public comment portion of the meeting and invited Mr. Patrick Siegel, operator of Robusto & Briar premium tobacco shop to speak. Mr. Siegel stated that he only sells the premium side of the tobacco business. He added that the construction of his walk-in humidor, before supplying it, involved \$30,000 in expenses and is made of specialty woods, including ethically harvested cedar. It costs him about \$10,000 to keep his product in good repair. He is disappointed to hear that there is no specialty provision. He spent \$300,000 on buying a dilapidated building, reflooring it, and putting in new steel beams. He has spent \$1.2 million on inventory over the past 3-4 years, sending money back to third world countries producing the goods. He is a certified retail tobacconist that has worked in the business for 12 years and is asking to not take away his family business. He has customers that come from 45 minutes away regularly, as well as international customers. Tom Corrigan, the business's attorney, added that Lakewood is a unique city that should apply a unique approach to this ordinance and that an exception carve out is needed. He spoke about his experience running into these issues while working for Lakewood as an assistant law director. Councilman Litten stated that the ordinance will be discussed at tonight's general meeting.

Councilwoman George stated that according to the Board of Health, premium tobacco isn't seeing an issue with underage use or addiction. She proposed a specialty carve out for the humidor in the business for this ordinance. Litten stated he is hesitant to do so to avoid creating a loophole. Siegel and Corrigan stated they are happy to work with the city on legislation.

Councilwoman George made a motion to allow the humidor for premium tobacco products. Alan stated he is worried about hookah bars finding a way around the ordinance and creating a slippery slope. Councilman Anderson seconded George's motion for the sake of continuing discussion on the topic.

Councilman Anderson asked if we are in consensus agreement that the humidor would be outlawed under the ordinance. Director Butler stated no, it would not be outlawed. Litten stated that sales to those under 21 in the shop would be banned. Siegel stated it is a self-service display which conflicts with the ordinance. George clarified that the humidor itself is not legal, but the vending mechanism that would be outlawed by the ordinance. Siegel stated it allows people to select cigar and bring it to the counter to purchase. Butler stated he would not define it as a vending machine because customers would still have to interact with a human being to purchase a cigar. If a business owner that had a vending machine that fronted the street and provided purchase without providing proof of age, that would be illegal under the ordinance. O'Leary added that it is the open display provision that makes it an issue. The Council could consider adding language specifying that the individual must have interaction with a store employee to prove age in order to purchase.

Councilman Bullock asked if premium tobacco is not an issue with youth, is it not unreasonable for a carve out for a shop. Over a half million dollars were invested in Robusto & Brair's shop.

However, if the public health community thinks it will be a loophole for youth, then that is legitimate.

Councilman Litten stated that the ordinance does not have much impact on clientele of Robusto & Briar since they don't sell many of the tobacco products excluded in the ordinance.

Councilman Anderson stated that he is satisfied with Butler's explanation on the humididor matter and does not greatly affect the business. He believed that the carve out is no longer necessary. George agreed and withdrew her motion for a carve out.

Councilman Litten reviewed 3 adjustments to ordinance that he requested, the first being allowing the Board of Health to be the permitting agent. The other two being, eliminating the criminal provision of the ordinance and removing section 52114 as duplicative. He stated O'Leary proposed that the city keep 52114 earlier in the meeting. Butler stated that Council is free to do what it wants, but there still will be a provision in the state code that covers the city in the event of underage sale.

Councilman Litten moved to recommend adoption including the 3 provisions included, which was seconded by Anderson. Councilmembers Litten, Anderson, and George all voted in favor of the motion.

Director Butler confirmed he made the recommended edits to Ordinance 44-18. 1 permit will not cover multiple vehicles. Permits will be effective from January 1<sup>st</sup> to December 31<sup>st</sup> of each year. It also clarifies that food trucks should not be left alone during hours of operation and that they should be operating within the Ohio Food Safety code at all times.

Councilman Anderson made a motion to approve the ordinance as substituted, which was seconded by Litten. Councilmembers Anderson, Litten, and George all voted in for of adoption.

The meeting was adjourned at 7:07PM

# SIGN-IN

## HHS Committee Meeting

### March 4, 2019

Please help us track your concerns by neatly printing your name, address and agenda # to be properly recognized by the Chair. Thank you.

NAME	SUBJECT	ADDRESS	PHONE AND/OR EMAIL
✓ Patrick Siegel		1388 Riverside	216 767 5318 patrick@rubiohbr.com
✓ Rick Novickis		Cuyahoga Co. Bd. of Health	(216)201-2000 ext. 1200
✓ Wendy Hyde		8600 Dublin Rd Dublin OH	440 465 0653
✓ Ashley Takashi	FS	Cuyahoga Co. Board of Health	(216)201-2001 ext 1225
✓ Suzanne Hrusch	FS	CCBH	(216)201-2001 x1242
Michelle Nochtig		City of Lakewood	216 337-4109
✓ TERRY ALAN		Cuyahoga County Bd of Health	216 201 2000

ORDINANCE NO.

BY:

AN ORDINANCE enacting Chapter 743, Mobile Food Service Operation, of the Lakewood Codified Ordinances to establish regulations on food trucks operating within the City.

WHEREAS, this Council sees a need to adopt regulations to ensure that food trucks operating within the City do so according to the most up-to-date standards of safety, sanitation, and liability while also balancing the interests of the restaurant community; and,

WHEREAS, the food truck industry has grown considerably in recent years, generating an estimated \$2.7 billion in revenue in 2017; and,

WHEREAS, over the past several years food trucks have played a key role in the success of many signature community events, offering a wide variety of fare to residents and visitors; and now, therefore,

~~WHEREAS, this Council sees a need to adopt regulations to ensure that food trucks operating within the City do so according to the most up-to-date standards of safety, sanitation, and liability while also balancing the interests of the restaurant community; now, therefore~~

BE IT ~~RESOLVED~~ ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. New Chapter 743, Mobile Food Service Operation, shall be enacted to read as follows:

**CHAPTER 743**  
**Mobile Food Service Operation**

- 743.01 Definitions.
- 743.02 Operation in Right of Way; Public Property.
- 743.03 Mobile Food Service Operation Permit.
- 743.04 General Regulations.
- 743.99 Penalty.

**743.01 DEFINITIONS.**

As used in this ~~chapter~~ Chapter:

- (a) "Food" shall mean a raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or part for human consumption.
- (b) "Mobile food service operation" means a food service operation required to be licensed under Ohio Revised Code that is operated from a movable vehicle or portable structure and that routinely changes location.

(c) "Mobile food service operation permit" shall mean the permit issued by the Division of Building and Housing pursuant to this Chapter.

(d) "Food service operation license" means the official document issued by the Cuyahoga County Board of Health or by another jurisdiction's health district with the authority to license food service operations.

(e) "Food safety certification" has the same meaning as in Section 3701-21-25 of the Ohio Administrative Code.

#### **743.02 OPERATION IN RIGHT OF WAY; PUBLIC PROPERTY.**

(a) Consistent with Section 741.07, no person shall cause a mobile food service operator to operate on any public street or sidewalk within the City while such public street or sidewalk is open to normal public use.

(b) No person shall cause a mobile food service operator to operate on any public street or sidewalk within the City unless the mobile food service operation has an existing agreement to participate in a permitted parade or special event pursuant to Chapter 557.

(b) No person shall cause a mobile food service operator to operate on public property, including public parks, unless the mobile food service operation has an existing agreement to participate in a permitted parade or special event pursuant to Chapter 557 or has otherwise received written permission from the Director of Public Safety.

#### **743.03 MOBILE FOOD SERVICE OPERATION PERMIT.**

(a) No person shall cause a mobile food service operator to operate in the City unless the operator has received a mobile food service operation permit from the City.

(b) An application for a mobile food service permit shall be submitted to the Division of Housing and Building on a form provided by the Director of Public Safety. Applicants must provide the following documentation upon submittal of the permit application:

(1) A copy of a current food service operation license;

(2) Proof of general liability insurance coverage, including without limitation, bodily injury and property damage, in coverage amounts of at least \$1,000,000.00 per occurrence, and naming the City as an additional insured, in a form that provides that the insurance coverage shall not be canceled or reduced by the insurance carrier without 30 days' prior written notice to the City; and

(3) Written permission from the property owner to operate on private property; and

(4) ~~A certificate issued by the Lakewood Division of Fire upon inspection that the mobile food service operation is in compliance with current fire and safety standards promulgated by the Chief of Fire.~~

(c) The application fee for all mobile food service operation permits shall be \$150.00, except that the ~~there shall be no fee~~ for a mobile food service operation

operating as an extension of a retail food establishment located within the City shall be \$50.00.

(d) Upon receipt of the completed application, the Division of Housing and Building shall tender it to the Division of Fire, which shall inspect the mobile food service operation to ensure it complies with then-current fire and safety standards promulgated by the Chief of Fire, and, upon completion, issue a certification of compliance to the Division of Housing and Building. Upon receipt of the certification from the Division of Fire, the Division of Housing and Building shall issue the mobile food service operation permit to the applicant.

(de) Mobile food service operation permits shall expire one year from the date of issuance and are not transferable.

(ef) No person shall cause a mobile food service operator to operate in the City, and the City may revoke the operator's mobile food service operation permit, if the operator's food service operation license has been suspended, canceled or revoked, or if the operator fails to maintain compliance with all regulations imposed by the Department of Public Safety, the Ohio Department of Health, the Cuyahoga County Board of Health or any other local, state or federal agencies.

#### **743.04 GENERAL REGULATIONS.**

(a) No person shall cause a mobile food service operator to:

(1) Sell food items, display food items, or conduct vending operations to the occupants of vehicles stopped in traffic;

(2) Display food items or place lines or other devices for the display of food items on any building or on any utility pole, planter, tree, trash container, or other sidewalk fixture;

(3) Place any food items in or upon any street or sidewalk;

(4) Leave a vending device unattended at any time;

(5) Utilize loud speakers or other noise-making devices in such a way to create a nuisance; or

(6) Conduct business without making available a container suitable for the placement of litter.

(b) All mobile food service operations must:

(1) Conspicuously display evidence of their mobile food service operation permit issued pursuant to this Chapter;

(12) Be constructed to internally store and contain all waste water for proper disposal, to prevent ground water contamination, and to prevent discharge of any waste water onto the ground or into any storm water sewer within the City;

(23) Obey any lawful order of a police officer to relocate to avoid congestion or obstruction during an emergency;

(34) Comply with all requirements of applicable state and local law, including, without limitation, the City's fire prevention code, the State of Ohio fire code, the Ohio Uniform Food Safety Code, and the City's traffic and zoning codes;

(45) Exercise reasonable care to ensure that operations do not create a health or safety hazard to customers, other users of the sidewalks and streets, or persons on abutting property; and

(56) Operate at all times with at least one person who has received food safety certification and be prepared to provide a copy of the certification.

**743.99 PENALTY.**

Whoever violates any provision of this ~~chapter~~Chapter is guilty of a minor misdemeanor for a first offense, and for a second or subsequent offense, shall be guilty of a misdemeanor of the fourth degree.

Section 2. Chapter 743 shall become effective January 1, 2020.

Section 23. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and that all such deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Adopted: \_\_\_\_\_

\_\_\_\_\_  
PRESIDENT

\_\_\_\_\_  
CLERK

Approved: \_\_\_\_\_

\_\_\_\_\_  
MAYOR