

## BOROUGH OF CONWAY

### ORDINANCE NO. 566

AN ORDINANCE OF THE BOROUGH OF CONWAY, COUNTY OF BEAVER, COMMONWEALTH OF PENNSYLVANIA, REPEALING AND REPLACING CHAPTER 7 OF THE BOROUGH OF CONWAY'S CODE OF ORDINANCES TO PROVIDE UPDATED REGULATIONS AND LICENSE REQUIREMENTS TO BE ENFORCED BY THE BOROUGH HEALTH OFFICER

WHEREAS, the Council of the Borough of Conway (the "Borough"), pursuant to the requirements of the Borough Code, 8 Pa.C.S. § 3100, *et seq.*, has established the position of Borough Health Officer; and

WHEREAS, the Borough seeks to update its Health Officer Ordinance to establish appropriate definitions, fees, licensing requirements and other regulations.

NOW THEREFORE, the Borough ordains that the Conway Borough Health Officer Ordinance be repealed and replaced with the following:

#### § 7.1 PURPOSE.

The purpose of this ordinance is to safeguard the public health and ensure that consumers are provided food that is safe, unadulterated and honestly presented.

#### § 7.2 OFFICE CREATED.

A position to be called the Health Officer is established for the Borough. This position is filled by the appointment of Council. The Health Officer has the power and duties as laid out in this Ordinance, and in applicable State laws.

#### § 7.3 DEFINITIONS.

(a) "Follow-up Inspection" means any inspection to review whether changes have been made to correct violations that resulted in noncompliant status determined by a prior inspection.

(b) "License" means Retail Food License as defined by 7 Pa. Code Chapter 46 and Act 106 of 2010 Subchapter A Retail Food Safety.

(c) "Mobile Food Vendor" means any food vendor that is operating in a trailer, tent or vehicle, or any other structure that is not located inside a permanent commercial structure that is serviced by municipal water and sewer services.

(d) "New Retail Food Establishment" means a Retail Food Establishment that is requesting an Annual Food License to begin operations for a location they do not have licensed in their name for more than 14 days. This Retail Food License expires on December 31<sup>st</sup> of each year it is issued.

(e) “Nuisance Inspection” means any inspection for any Licensed Retail Food Establishment requiring more than two (2) inspections in a twelve (12) month period due to repeat violations or verified complaints.

(f) “Other Inspection Fee” means an inspection that is required under PA Act 106 of 2010 for a Retail Food Facility or for a Retail Food Facility that is exempt from licensing (but not inspection) under Subsection A, Retail Food Safety Act, or an inspection that is not required but is requested by the owner or operator of a current or future Retail Food Facility for any reason. The Other Inspection Fee is due at the time of the inspection. A Certificate of Inspection will be issued after a complaint inspection is completed and all fees collected.

(g) “Renewal” means the re-issuance of an Annual Food License for Retail Food Establishment operated for more than fourteen (14) days per year that is not a Mobile Food Vendor. This Retail Food License is issued and expires December 31<sup>st</sup> in the year it is issued.

(h) “Temporary Retail Food License” means a food vendor that is operating in a single trailer, tent or vehicle or any other structure that sells Retail Food Items for a period of fourteen (14) days or less at any one single event or Celebration. This Retail Food License is issued for a period not more than fourteen (14) days.

§ 7-4 ANNUAL LICENSE FEE.

(a)	<u>New Retail Food Establishment</u>	\$200.00
(b)	<u>Renewal</u>	\$150.00
(c)	<u>Temporary Licenses:</u>	
	Temporary Retail Food License/Event	\$50.00
	Temporary Retail Food License for current Borough Licensed Establishment/Event	\$ 35.00
	Temporary Retail Food License for 501(c)(3)	\$ 0.00
	Temporary Retail Food License/Year	\$200.00
	Temporary Retail Food License/Renewal	\$150.00
(d)	<u>Nuisance Inspection Fee</u>	\$100.00
(e)	<u>Follow-up Inspection Fee:</u>	
	First follow-up inspection during the previous 12 months	\$150.00
	Second or subsequent follow-up inspection during the previous 12 months	\$300.00
(f)	<u>Other Inspection Fee</u>	\$100.00

(g) A nuisance inspection fee or follow-up inspection fee is due at the time of each nuisance inspection or follow-up inspection payable to the Borough.

(h) An application fee is to be paid at time of application and shall be payable to the Borough. No application will be processed, or a License issued, until all fees owed to the Borough are paid. If a License is suspended, denied or revoked, no part of the fees paid are to be refunded.

(i) Applications and fees for a License renewal are due one (1) month prior to the expiration date of the current License.

(j) It is the responsibility of the applicant to obtain and submit all required applications and forms in a timely manner for all Licenses requested.

(k) A Commonwealth of Pennsylvania recognized valid photo ID and a PA Sales and Use Tax License is required for all applications submitted for Licenses. A copy will remain on file with the application. Current contact information must be submitted and remain on file and must include phone, address and alternative numbers for 24-hour emergency use. Updates to this information must be submitted no later than three (3) days after the change takes place.

(l) In the event the respective Renewal license fee charged pursuant to subsection (b) is not paid on or before the fifth (5<sup>th</sup>) day of the succeeding month the fee is due, the licensee shall be charged a late fee in the amount of thirty-five (\$35.00) dollars for each month the respective license fee remains outstanding thereafter.

#### § 7-5 REVOCATION FOR FEE DELINQUENCY.

(a) Should any establishment become delinquent in its License fee as required by this Ordinance, such License shall be revoked after due notice of fourteen (14) calendar days. The establishment shall cease operations when the License is revoked.

(b) Should any establishment become delinquent in fines, fees or other monies owed to the Borough of Conway as a result of this Ordinance, such License shall be revoked after due notice of fourteen (14) calendar days. The establishment shall cease operations when the License is revoked.

#### § 7-6 REVOCATION FOR FOOD CODE VIOLATIONS.

(a) All Food Establishments shall conform to all standards in accordance with 7 Pa. Code Chapter 46.

(b) Any establishment found not conforming to the standards set forth by this Ordinance may be cited as permitted herein. In addition, the establishment may have their License revoked or suspended immediately. Revocation or suspension will be determined by the Health Officer based on the risk for an imminent health hazard to the public. The establishment shall cease operations immediately when the License is revoked or suspended. A License may be suspended for any length of time as determined by the Health Officer.

(c) Shall the License be revoked, a new License may be applied for by the licensee after a period of one (1) year with all fees paid prior to re-issuance and must include a plan review as outlined in the Food Code.

(d) Shall the License be suspended for any period of time, a complete re-inspection must be completed and written permission to continue operations obtained from the Health Officer. Any fees owed to the Borough must be paid in full prior to resuming operations.

(e) A sign shall be posted on the entry door(s) of any establishment whose License is suspended or revoked stating "Closure by the Board of Health". This sign shall remain posted during the time of the closure and if removed shall be considered a violation and a separate violation for each day it remains removed. The sign will be dated, signed by the Health Officer, have the contact information of the Health Officer, and will state "It must remain in place until removed by the Health Officer and it is a violation finable up to \$1,000.00 per day if it is removed."

(f) Shall the licensee request a hearing for a License that has been suspended or revoked, a hearing will be held by Borough Council, sitting as the Board of Health within fourteen (14) days after receiving written notification requesting the hearing. The Board of Health will review all facts and statements and render a written decision within two (2) business days of the hearing. A hearing must be requested within thirty (30) days after the revocation or suspension notice has been given. A record of the proceeding shall be made either by stenographic means or electronic recording. The method of the means of recording is at the discretion of the Board. A licensee may appeal an unfavorable decision of the Board of Health by filing an appropriate action challenging the Board's findings with a court of appropriate jurisdiction. A non-refundable \$200.00 is required to be paid to the Borough for the appeal. In addition, the licensee appealing will be responsible for the cost of advertising a special meeting (if necessary) along with the appearance fee of the stenographer.

#### § 7-7 OPERATING WITHOUT A LICENSE.

(a) Any Retail Food Establishment found operating without a License shall allow an inspection without delay. Refusal of inspection shall be considered a separate violation and subject to penalties as listed in this Ordinance.

(b) Any Retail Food Establishment found operating without a License shall cease all operations immediately upon order of the Health Officer. To not immediately cease operations shall be considered a separate violation and subject to as listed in this Ordinance. The establishment shall be posted as in Section 306(e).

(c) To operate a Retail Food Establishment without a License violates this Ordinance and 7 Pa. Code Chapter 46 and is subject to penalties as listed in this Ordinance.

#### § 7-8 ADOPTION OF 7 PA CODE CHAPTER 46.

The provisions, terms, procedures, appendices and standards in 7 Pa. Code Chapter 46, with the exception of section 46.1141 License Requirements, are adopted to the extent they do not conflict with the requirements of this Ordinance.

#### § 7-9 MOBILE FOOD VENDORS.

(a) All Mobile Food Vendors must be identified by displaying the Name, City and State of the Business or licensee in at least 3-inch letters in a non-conspicuous place.

(b) All Mobile Food Vendor Licenses are issued to a single trailer, tent or vehicle or any other structure at a single location and are not transferable to any other trailer, tent or vehicle or any other structure or any other location.

§ 7-10 EFFECTIVE DATE.

This Ordinance shall become effective upon adoption.

§ 7-11 REPEALER.

The provisions of all prior Ordinances which are inconsistent with the terms of this Ordinance are hereby repealed.

§ 7-12 AMENDMENTS TO THE FEES.

Any amendment to any of the fees in the Ordinance may be amended by Borough Council through the passage of a Resolution at a public meeting.

§ 7-13 PENALTY.

Any establishment who violates or fails to comply with any provision of this Ordinance will be subjected to a fine of \$100.00 up to \$1,000.00, imprisonment for up to 90 days, or both. Each day's continuance of a violation of this Ordinance shall constitute a separate offense.

THIS ORDINANCE adopted by the Council of Conway Borough at a duly assembled public meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST:

CONWAY BOROUGH

\_\_\_\_\_  
Secretary

By:

\_\_\_\_\_  
Council President

\_\_\_\_\_  
Mayor