



Department of Commerce

Division of State Fire Marshal
John R. Kasich, Governor
Jacqueline T. Williams, Director

April 23, 2018

Ms. Amanda Sines
Government Advantage Group
17 South High Street – Suite 750
Columbus, Ohio 43215

Re: Variance (Modification) Request ID Number: V17ed.-009
Mobile Food Unit Separation Distances

Dear Ms. Sines:

I am in receipt of your request on behalf of the Ohio Fair Managers Association (“OFMA”) for a variance from portions of administrative rules regulating separation distances between operating mobile food units as adopted by the Ohio Department of Commerce, Division of State Fire Marshal (“SFM”). Specifically, you are requesting a variance from Ohio Administrative Code (“OAC”) §1301:7-7-03(T)(7), Ohio Fire Code (“OFC”) 320.7, which states:

OFC 320.7 Distance and separation requirements. While parked and in operation mobile food units, exclusive of awnings and appurtenances, using or containing a fuel source or generator other than the vehicle fuel tank shall be separated from the entrances and other exits of buildings or structures, combustible materials, vehicles and other cooking operations by a clear space distance of 10 feet (3 m).

Exception: When approved by the local authority having jurisdiction, mobile food service operations using LP-Gas may be located at a distance of less than 10 feet from other mobile food units except that at no time shall a mobile food unit be closer than 7 feet from other mobile food units.

The variance request is to reduce and/or eliminate the requirement that mobile food units, when such units are parked and being operated for cooking activities, be separated from all adjacent mobile food units by a clear space distance of 10 feet (3 meters). The intent is to have the requested variance apply to all mobile food unit operations at any location in the State.

The SFM may grant a variance to applicable OFC provisions pursuant to and in accordance with OAC §1301:7-7-01(D)(8); OFC 104.8. That section provides as follows:

OFC 104.8 Variances (modifications) by state fire marshal. Whenever there are

practical difficulties involved in carrying out the provisions of the state fire code, the state fire marshal, in the state fire marshal's discretion, may modify any provision of the state fire code or any other administrative rule promulgated by the state fire marshal by issuing a variance upon written application by an affected party and upon demonstration by that party of both of the following:

1. That the variance will not threaten the public health, safety or welfare; and
2. That the party will provide measures to protect the public health, safety and welfare that are substantially equivalent to the measures otherwise required under the state fire code or other applicable laws, rules and regulations.

With regard to your request, I make the following findings:

1. A literal enforcement of the new minimum separation distance requirements for mobile food units that are both parked and operating would result in significant logistical, operational and competitive hardships on both fairgrounds (and similar locations) and mobile food unit operators. These hardships include substantial disruptions of previously approved and long planned events as mobile food units and other attractions/displays would need to be relocated, moved and/or eliminated to comply with the rule, exclusion of significant numbers of previously authorized mobile food unit vendors due to decreased site space at fairs and similar events, a reduction in business opportunities for mobile food unit vendors to provide services at future events and a reduction in associated revenues for both fairgrounds/event sponsors and vendors. The conditions constitute a practical difficulty in complying with the OFC; and
2. Granting a permanent variance to the minimum separation distance requirements for mobile food units that are both parked and operating will not threaten the public, health, safety or welfare of the citizens of Ohio. Specifically, section 320 of the 2018 Edition International Fire Code (IFC) does not specify that mobile food units should be separated from other units by a minimum distance of 10 feet (3 meters). Accordingly, as the IFC is an internationally promulgated consensus safety standard that is developed by nationally recognized safety experts from the fire safety and business community and it is used a base code for the OFC (the current OFC is based upon the 2015 OFC), modifying the OFC to match this new nationally recognized minimum safety standard is consistent with the best available practices for public safety.

Therefore, effective April 23, 2018, and pursuant to the discretionary powers granted to me by OAC §1301:7-7-01(D)(8); OFC 104.8 and subject to the limitations and conditions set forth below, I hereby **GRANT** a variance to the provisions of OFC 320.7 to allow all mobile food units subject to OAC 1301:7-7-03(T), OFC 320 to operate as follows:

General:

1. Mobile food units, regardless of the unit's location within Ohio, that are parked and in an operational status (*i.e.* – the unit is being used for cooking with a fuel or electrical powered device or other heat source) must be separated other mobile food units that are parked and operating by a clear space distance of three (3) feet (one [1] meter); and
2. Mobile food units operated in accordance with this variance are not subject to the existing clear space separation distance requirements of ten (10) feet (three [3] meters) contained in OFC 320.7 or the existing exception to OFC 320.7.

Limitations and Conditions:

This variance is conditioned upon and limited as follows:

1. Mobile food units, regardless of the unit's location within Ohio, that are parked and in an operational status (*i.e.* – the unit is being used for cooking with a fuel or electrical powered device or other heat source) shall be separated from the entrances and other exits of buildings or structures, combustible materials and non-mobile food unit vehicles by a clear space distance of 10 feet (3 m).
2. Mobile food units shall comply with all other applicable laws, rules and regulations, including the other applicable portions of OAC §1301:7-7-03(T), OFC 320.
3. This variance does not in any way constitute an approval of or finding that any particular mobile food unit is in compliance with any other provision of applicable laws, rules and regulations, including the OFC and local enactments.

Termination and Expiration:

This variance shall terminate or expire as follows:

1. This variance shall remain in full force and effect until the OFC is formally amended;
2. The SFM may suspend or terminate this entire variance or parts thereof, disqualify specific mobile food unit(s) from continuing eligibility for this variance, or otherwise limit its scope of applicability of this variance for:
 - a. noncompliance with the provisions of this variance;
 - b. causing the occurrence of conditions that would/do result in the failure to comply with or violations of the provisions, limitations or conditions of this variance; or
 - c. failure to remedy noncompliant conditions, when requested by the SFM or fire code official, within a reasonable time.

3. The SFM may, in its discretion, limit the application of, suspend or terminate this variance for any public safety related reason.

If you have any questions, please do not hesitate to call my office at (614) 752-8200.

Sincerely,

Jeff A. Hussey
State Fire Marshal

cc: William Spurgeon, Chief Deputy State Fire Marshal
Timothy C. Thompson, Division Counsel
Tracie M. Boyd, Asst. Division Counsel / Code Development Officer
Alan Smith, Chief, SFM Code Enforcement Bureau
Variance File #V17ed.-009