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TO: Eileen Donoghue, City Manager *EJD*
FROM: R. Eric Slagle, Director of Development Services
DATE: May 6, 2020
RE: Motion by C. Elliott - Req. City Council Discuss Provisions Of City Code Of Ordinances, Chapter 167, Hawkers And Peddlers Licenses

This memorandum addresses the requests from Councilor Elliott for a review and recommendations regarding the provisions of Chapter 167 regarding mobile food vendors. Please accept this narrative and recommendations from Development Services in response to this request.

As a background, in the entire time the mobile food vendor ordinance has been in place, Development Services has received complaints about a single food truck, that being the Gamma Fisheries seafood truck that Councilor Elliott discussed. When the complaints came in, we determined that Gamma Fisheries was in violation of the City's interpretation of the ordinance. For the other 29 permitted food trucks, we've never received a complaint. From that perspective, this ordinance, adopted by the Council in 2016, has been a success, both encouraging food trucks around the City, while not disproportionately impacting brick and mortar retail.

With that in mind, Development Services staff felt like it did not make sense to make sweeping wholesale changes to the ordinance for an issue that already constituted a violation. Rather, we decided to make changes to clarify and strengthen the enforcement tools (fines, posting requirements, clarifying the metered parking spaces) for the staff, and the LPD, who would be doing off-hours enforcement.

Since we recently increased our food permit fees, staff determined that an increased fee was not appropriate. Clarifying that public way parking required being in a metered space will require food trucks to bag or pay the meters during their operational hours, and so that will bring in parking revenue to the parking enterprise. Also, there is an economic development concern in that many food truck vendors migrate to brick and mortar restaurants as their business becomes more successful, so we did not want to discourage them from operating. Additionally, there are businesses that actively seek to have food trucks operate to complement their business (Navigation Brewery, for instance), so we did not want to give them a disincentive with a higher fee.

With respect to adding specific distance in the ordinance as a prohibition from other like businesses, staff had a concern that any distance would be arbitrary, and since Lowell's neighborhoods are so varied, the appropriate distance in one area would not be the same as in another. Given that concern, along with the lack of complaints noted above, adding a distance seemed inadvisable.

The proposed ordinance changes do two specific things. First, the proposed changes clarify that approved locations will appear on the Food Truck Permit, and require that permit to be displayed where it is visible from the customer service area. While that requirement existed in the Hawkers and Peddlers portion of the ordinance, it was not previously laid out in the Mobile Food Vendor portion of the ordinance. This should allow for easier enforcement during non-business hours, when the Lowell Police Department will likely be the primary enforcement office for any violations. Second, we are clarifying the requirements for food trucks to locate in a dedicated, metered space when parked on the public way. This will prevent vehicles from parking in unmetered spots, such as those adjacent to Clemente Park.

In addition, Development Services is preparing a new, streamlined Food Truck application to ensure that we obtain all of the appropriate information from the vendors, including contact information, which we can then share with other departments, including LPD. We have put a hold on the issuance of any Food Truck permits for the upcoming year until such time as the City Council has an opportunity to review and approve these amendments, and so that they can be put in force as soon as possible.

As an enhanced enforcement tool, Development Services will dedicate a portion of overtime funds for Sanitary Code enforcement on the weekends during the summer months (once food establishments can reopen). This enforcement will be specifically for surveying high traffic areas to ensure that food trucks are complying with the requirements of the ordinance. We will also be providing specific information to the Lowell Police Department about the new permits to enable officers to more easily discern the allowed locations for each food truck.

Attached please find a redlined version of Chapter 167-7 Mobile Food Vendors.

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04/09/2020

Chapter 167 Hawkers and Peddlers

[HISTORY: Adopted by the City Council of the City of Lowell 4-26-1988 as Ch. 11, Art. VI of the 1988 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Advertising — See Ch. 91.

Canvassers and solicitors — See Ch. 125.

Fees — See Ch. 150.

Junk and secondhand dealers — See Ch. 185.

Noise — See Ch. 204.

Streets and sidewalks — See Ch. 243.

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§ 167-7 Mobile food vendors. [Added 9-13-2016]

A. Mobile food vendors introduction.

(1) In order to protect public health and safety to compliment and promote the business environment and the atmosphere of the Lowell National Park, to encourage visitors to the City and to foster the various City attractions, it is declared that it is a reasonable exercise of the police powers of the City of Lowell to establish a license and permit process for mobile food vendors; license required.

(2) Any person who engages in business in the Commonwealth of Massachusetts selling edible goods who is not required to be licensed as a temporary vendor under MGL c. 101, § 3, or as a hawker or peddler under MGL c. 101, § 22, shall be required, before transacting business, to apply to the City of Lowell City Council for a license to conduct such business as a mobile food vendor in the City of Lowell.

(3) Mobile food vendors may operate in the City of Lowell throughout the year but shall abide by all established parking rules and regulations, including seasonal parking bans on both private and public properties.

(4) Mobile food vendors may operate in the City from the hours of 6:00 a.m. until 2:00 a.m.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

EDIBLE GOODS

Includes, but are not limited to:

(1) Prepackaged food, including but not limited to candy, beverages and ice cream.

(2) Prepared food, including but not limited to hot dogs, desserts, pizza.

(3) On-site prepared food, including but not limited to shaved ice, sandwiches, and tacos.

FOOD SERVICE ESTABLISHMENTS

Businesses that sell edible goods and have been inspected and approved by the City of Lowell's Division of Development Services, including commercial kitchens and commissaries.

MOBILE

The state of being active, but not continuous movement.

MOBILE FOOD VENDOR

Any person or entity engaged in the business of edible goods from a mobile food facility within the City of Lowell. This term includes, but is not limited to:

- (1) Mobile food truck: a self-contained motorized unit selling items defined as "edible goods" at a stationary location.
- (2) Mobile food pushcart: a nonmotorized unit that is limited in the types of edible goods it sells at a stationary location.
- (3) Mobile canteen truck: a self-contained motorized unit selling items defined as "edible goods" that moves from place to place and is not stationary in the same location for more than 30 minutes.

STATIONARY LOCATION

The position of the mobile food vendor when not in motion and addressing the public for the purpose of sales.

C. Permit and application process.

- (1) Permit. Every mobile food vendor shall have an annual permit issued by the City of Lowell to conduct business in the City.
- (2) Application. An applicant shall apply for a permit through an application form produced by the City of Lowell's Division of Development Services.
- (3) Private property application process. The application shall be processed through the following procedure:
 - (a) Application submitted to the City of Lowell's Division of Development Services office.
 - [1] Application must include a letter of agreement from the property owner indicating permission to locate on the property.
 - [2] Application must include plans indicating where the vendor intends to locate on the private property.
 - [3] Application must include plans to indicate the mobile food vendor will comply with the Americans With Disabilities Act (ADA).

- (b) Application shall be reviewed by designated Development Services staff.
- (c) Once approved and deemed eligible by Development Services, the mobile food vendor may obtain a mobile food vendor permit by being inspected by:

- [1] Senior Sanitary Code Enforcement Officer.
- [2] Fire Prevention and Code Enforcement Office.
- [3] Police Department.

(d) The City of Lowell Division of Development Services Department may then, and only then, approve a mobile food vendor permit.

(e) Each mobile food vendor permit shall expire on June 1 of every year.

(f) The permit shall not be transferable from person to person without the written approval from the City.

(g) The permit is valid for one vehicle only.

(4) Public property application process. The application shall be processed through the following procedure:

(a) Application submitted to the City of Lowell's Division of Development Services office.

- [1] Application must include plans indicating where the mobile food vendor intends to locate on public property.
- [2] Application must include plans to indicate the mobile food vendor will comply with the Americans With Disabilities Act (ADA).

(b) Application shall be reviewed by designated Development Services staff.

(c) Once approved and deemed eligible by Development Services, the mobile food vendor may obtain a mobile food vendor permit by being inspected by:

- [1] Senior Sanitary Code Enforcement Officer.
- [2] Fire Prevention and Code Enforcement Office.
- [3] Police Department.

(d) The City of Lowell Division of Development Services Department may then, and only then, approve a mobile food vendor permit.

(e) Each mobile food vendor permit shall expire on June 1 of every year.

(f) The permit shall not be transferable from person to person without the written approval from the City.

(g) The permit is valid for one vehicle only.

D. Restricted locations.

(1) Mobile food vendors are restricted in the Central Business District.

(a) Central Business District is that area of downtown bounded as shown on the map on file at the office of Development Services Division.

E. Private property locations.

(1) Mobile food vendors that will be locating in private property are not allowed in residential zones or on lots whose use is strictly residential.

(2) Mobile canteen trucks are only allowed to operate on any open construction sites or businesses.

(a) The truck must be pulled up on the construction site or business in order to vend legally.

F. Public property locations.

(1) If locating on a public street, mobile food vendors must follow all parking regulations.

(a) Mobile food pushcarts are not allowed to locate on public streets due to safety concerns.

(b) A mobile food truck must fit within a designated metered parking space or spaces and follow the below criteria:

[1] Pay for parking spot or spots they occupy;

[2] Cannot locate in a fifteen-minute parking spot or handicapped parking spot;

[3] Cannot locate in a loading zone or bus stop;

[4] Cannot locate in a crosswalk or sidewalk;

[5] Cannot locate within 20 feet of an intersection;

[6] Cannot locate within 10 feet of a fire hydrant;

[7] Cannot locate in front of someone's driveway.

[8] Cannot use the City sidewalk to stage any mobile food vendor equipment, with the exception of the trash receptacle as required in G. below. (c) Mobile food vendors wishing to use a metered parking space for more than two hours may reserve spaces through the City's Parking Department by contacting 978-674-4014. In such instances, the following terms and conditions shall apply:

[1] Metered space bags are issued by the employees of the City of Lowell Parking Department during business hours.

[2] A rental form, deposit check and check for rental fee must be furnished at time of issuance.

[3] The deposit is set in the City's Fee Ordinance, Ch. 150, and must be made by check only, refundable once the bags have been returned.

[4] The rental check in the amount set in the City's Fee Ordinance, Ch. 150, is also required at the time of issuance.

[5] If the bag is not returned, or returned in an unusable condition, the deposit will not be refunded.

[6] If a space is bagged for any portion of a day when metered parking is in effect, the renter will be charged for the full day.

[7] Bags for metered spaces must be attached four hours before the no-parking area becomes enforceable. Vehicles present in a space prior to it being bagged may not be removed for 24 hours once the bag has been installed.

(2) If locating on any City or state property the mobile food vendor must obtain permission from the City or State.

G. Special considerations.

(1) Preexisting licenses shall be grandfathered for the current license holder at his or her current location.

(2) Mobile food vendor business windows must face the sidewalk or curb when parked on a City street.

(3) Mobile food vendors must supply a clearly marked trash receptacle in the immediate vicinity of their mobile food trucks or mobile food pushcarts.

(4) Mobile food vendors must pick up, remove and dispose of all trash and refuse dispensed from their mobile food trucks or mobile food pushcarts before leaving the area.

(5) Mobile Food Vendors must post their permit where it is clearly visible from their customer service window. Such permit shall state the location(s) that the vendor is permitted to operate. Operation by a vendor in a location not listed on the permit shall be a violation of this chapter.

(6) Mobile food vendors may also be allowed to operate in locations permitted under an event permit from the office of Cultural Affairs and Special Events. Such vendors must be inspected and permitted as described in C above. Such vendors shall be issued an "Events Only" permit, which does not allow operation within the City other than at permitted events.

(7) If a mobile food vendor wishes to apply for a new location, or to renew an existing permit, they must submit an application to the Division of Development Services as noted in C above.

H. Enforcement.

(1) Enforcement of Chpt. 167-7 shall be performed by inspectors of the Division of Development Services and the Lowell Police Department;

(2) Violation of any portion of this chapter shall be punishable by a fine of up to \$300 per day and may result in the rescission of the applicant's mobile food vendor permit.

Licensed Food Trucks

Business Name	Owner	Street #	Street Address	City/Town	State	Zip
EggRoll Café	London Long	219	Jackson St Apt 127	Lowell	MA	01852
OG's Ice Cream	Peter Bautis	61	Webber St.	Lowell	MA.	01851
4 Brothers Miad Inc (Chez Rafiki's)	Lhoussine Rafiq	249	Dutton St	Lowell	MA	01852
Phoenix Rising Pizza	Allan Machado	52	Arlington St.	Lowell	MA	01854
Chicks & Dogs	Brennan Ware	38	Cox Lane	Methuen	MA	01844
Chicken on the Road	Mary Bishop	599	Boston Rd	Billerica	MA.	01821
Marko's Grill	Benjamin Williams	509	E Merrimack St.	Lowell	MA.	01852
Eat and Go (Come y Vete)	Raul Rivera	14	Gaston Terr	Lowell	MA	01852
Michele's Ice Cream	Michelle Santos	409	Aiken Ave	Dracut	MA	01826
Dylans & Petes Ice Cream	Dylan & Pete Inc	558	Chelmsford St	Lowell	MA	01851
Marben Rose LLC dba Reasons to be Cheerful	Philip Rosenfield	6	Draper St	Wayland	MA	01778
For The Kids Inc	Thomas Porzio	59	Heather Row	Tewksbury	MA	01876
Mediterranean Home Cooking	Pranvera Jakuj	75	Washington St	Peabody	MA	01960
Mimzee's Ice Cream Truck & Concession	Steven Dulock	150	Sawyer's Ln	Tewksbury	MA	01876
Street 55	Chris Cota	846	Fellsway	Medford	MA	02136
John's Fish Truck	John Quadros	6	Davis Terrace	Peabody	MA.	01960
Egyptian Grill	Makar Sodky	77	Albion St. Flr 3	Fall River	MA.	02723
Cuesta's Fiestas	Robert Cuesta	27	Washington Pkwy	Lowell	MA	01851
Shuck Food Truck	Benjamin Trusiak/ Ju lia Nadler	305	Dutton St Apt 303	Lowell	MA	01854
Tara's Fried Dough	RTI Concessions	323	Groton Ter	Dunstable	MA.	01827
Antonio Fish Truck	Antonio F. Alves	174	Billerica St.	Lowell	MA.	01852
Clyde's Cupcakes	Clyde Bullen	104	Epping Rd	Exeter	NH.	03833
Gamma Fisheries	Tavo Contreras	16	Pearl St	Weymouth	MA	02191
Riceburg	Jessica Shen	552	Washington St	Wellesley	MA	02482
Fresh Beats	Savanah Marshall	22	Third Ave Apt 1	Lowell	MA	01854
Twaites	Abbey Hoffman	36	Railroad St	Methuen	MA	01844
Bobby and Jack's Memphis Barbeque	Jonathan Ryan	500	Colburn Ave	Dracut	MA	01826
Down to the Roots	Jonathan Diaz	17	Liberty St	Lowell	MA	01851
Butter "UR" Biscuit	Julissa Walker	284	Maple St	Middleton	MA	01949