

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

ORDINANCE

An Ordinance Amending "Code of Ordinances, City of Lowell, Massachusetts," with respect to Chapter 167, Hawkers and Peddlers by amending certain sections entitled Mobile Food Vendors.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

1. "The Code of Ordinances of the City of Lowell, Massachusetts", adopted by the City Council on December 23, 2008, as amended, is hereby amended as follows:

2. **Amend §167-7 C.(3)(e) as re-lettered to delete the word 'April' and add the word 'June'.**

The paragraph now reads as follows:

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

3. **Amend 167-7 C.(4)(e) as re-lettered to delete the word 'April' and add the word 'June'.**

The paragraph now reads as follows:

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

4. **Amend 167-7 F.(1)(b) to insert the word "metered" between 'designated' and 'parking'**

The paragraph now reads as follows:

"(b) 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 15 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.

5. Add new #8 as follows:

- "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."

6. Amend 167-7 F.(1)(c) by adding a new #3 and #4 and deleting the existing #3 and #4 shall now read as follows:

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:

- "3. The deposit is set in the City of Lowell Ordinance, Ch. 266, 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 of Lowell Ordinance, Ch. 266, is also required at the time of issuance."

7. Amend 167-7G to add to the Special Considerations

"(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, but do not require City Council approval. 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. Pre-existing licenses shall be grandfathered for the current license holder at their current location.”


“8. By creating a new section entitled H. Enforcement to read as follows:

(1) Enforcement of Chapter 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 as set forth in the City of Lowell Fee Ordinance, Ch. 150 and may result in the rescission of the applicant’s mobile food vendor permit.

9. If any section, subsection, sentence, clause, phrase, word, or other portion of this ordinance is, for any reason, held to be unconstitutional or invalid, in whole, or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance, which remaining portions shall continue in full force and effect.

10. This Ordinance shall take effect upon its passage in accordance with the provisions of Chapter 43 and 40A of the General Laws of the Commonwealth of Massachusetts.



Christine P. O'Connor
City Solicitor



Diane N. Tradd
Assistant City Manager/DPD Director

R. Eric Slagle
Director of Development Services

Shaun Shanahan
Building Commissioner

May 21, 2020

City Manager Eileen Donoghue

Mayor John Leahy

Members of the City Council

Re: Vote –To Amend the Mobile Food Vendor Ordinance and the Fee Ordinance

Dear Madam Manager, Mayor Leahy and Members of the City Council:

The attached Votes would enact the changes proposed and approved by the City Council at the May 12, 2020 City Council meeting regarding the Mobile Food Vendor Ordinance, and add a section to the Fee Ordinance regarding the fine for violating said ordinance. Please see the redlined version of the amended ordinance, attached hereto.

Yours very truly,

R. Eric Slagle

Director, Development Services

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.

...

§ 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~~April 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 ~~April~~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 General Ordinances, Ch. 266, and must be made by check only, refundable once the bags have been returned.

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[4] The rental check in the amount set in the City's General Ordinances, Ch. 266, is also required at the time of issuance. [3] The deposit is \$50 per space, check only, refundable once the bags have been returned.

[4] The rental check in the amount of \$10 per space per day 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.

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(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 by punishable by a fine of up to \$300 per day and may result in the rescission of the applicant's mobile food vendor permit.

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