

Draft Food Cart Legislation 1/22/2015

Note: This draft is for discussion purposes, it has not yet been introduced as proposed legislation. This proposal will not take effect until it has been approved by the City Council and signed by the Mayor.

Key Points:

1. New Chapter for food trucks/food trailers: Chapter 60 Article I.
2. New Chapter for food carts: Chapter 60 Article 2.
3. Chapter 62 will no longer apply to food truck/trailer or food cart vendors.
4. Chapter 62 will be revised to cover non-food vendors.
5. License is required for food cart vending.
6. No change in Center City, Harbortown and Marina Vending Districts- vending is allowed only in locations approved by the City Clerk through a lottery.
7. Food truck/trailer operation on private property regulated by the Zoning Code- Certificate of Zoning Compliance under Zoning Code Section 120-149.
8. Outside of Center City, Harbortown and Marina Vending Districts vending is allowed in locations approved by Rochester Police Department. Vending is not allowed in R-1, R-2, or R-3 Districts. Certain distance requirements apply.
9. No food carts allowed to operate in street right of way
10. Includes distance separation requirements, equipment requirements and rules for operation of food cart.
11. Each food cart must at all times carry on the vehicle a measuring device with a measuring capacity of no less than 500 feet as a condition of its licensure.
12. All employees must wear an ID badge issued by the City.
13. Food carts that do not have a City license that want to vend at a special event must get a Temporary Permit valid for the year or a 3-day Temporary Permit.
14. \$1,000,000 insurance requirement for food carts.
15. Requires Police background check for license.
16. Requires Fire Department inspection and safety training.
17. Additional fire safety rules to be determined by Fire Marshall.
18. Commissioner of Recreation and Youth Services will approve vending in city parks, Monroe County will approve vending in county parks.

19. Fees:

Application- \$7

License \$250, Center City, Harbortown and Marina Vending Districts \$750

Temporary Permit full year- \$100 (good only for special events)

Temporary Permit 3 days- \$56 (good only at one special event)

ID badge \$24

Replacement badge or license \$10

Fee exemption for certain veterans

DRAFT 1/22/2015

Chapter 60

Article II. Food Cart Vendors

§ 60-14. Definitions.

As used in this article, the following terms shall have the meanings indicated:

FOOD CART

A cart or other moveable device used on the public sidewalks or in public places, in which ready-to-eat food is cooked, wrapped, packaged, processed or portioned for sale or distribution, and which is not licensed as a food truck or food trailer.

FOOD CART VENDOR

The owner or operator of a food cart or the owner's agent; hereinafter referred to as "vendor."

CENTER CITY VENDING DISTRICT

Shall include all of the Center City Zoning District, as established pursuant to Chapter 120, Zoning Code, and in addition, as set forth in a map on file in the City Clerk's office, an area extending generally easterly from the Center City Zoning District which is bounded on the west and north by the Center City Zoning District boundary extending from the southerly side of East Avenue to the center of Alexander Street at approximately 417 Alexander Street, then continuing southerly down the center of Alexander Street to the center of University Avenue, then continuing easterly along the center of University Avenue to the center of Goodman Street, then continuing southerly along the center of Goodman Street to and including the southerly side of East Avenue, then continuing westerly along the southerly side of East Avenue to the Center City Zoning District boundary. The Center City Vending District shall also include both sides of Alexander Street southerly from Gardiner Park to the southerly side of Tracy Street and its extension westerly, as set forth in the map on file in the City Clerk's office.

HARBORTOWN VENDING DISTRICT

Shall include all of the H-V Harbortown Village Zoning District as established pursuant to Chapter 120, Zoning Code, which is north of the O'Rourke Bridge, and those lands zoned O-S Open Space which border the southern boundary of Ontario Beach Park and are east of Estes Street.

MARINA VENDING DISTRICT

Shall include all of the M-D Marina District as established pursuant to Chapter 120, Zoning Code.

§ 60-15. General provisions.

A. No food cart shall operate on a public sidewalk or public place within the City without first having obtained a valid food cart vending license as prescribed in this article.

B. No food cart shall operate within the public street right-of-way

C. Operation of a food cart on property that is not a public sidewalk or a public park shall be regulated in accordance with all applicable provisions of City Code Chapter 120: Zoning. Food carts operating on private property shall comply with the same requirements as food trucks pursuant to Municipal Code Section 120-149.

D. No food cart or food cart vendor shall:

- (1) Operate a food cart without procuring and prominently displaying on his or her cart a license.
- (2) Stop, stand or park a food cart on any roadway, except when actually loading or unloading.
- (3) operate within any public sidewalk adjacent to property zoned Low Density Residential (R-1), Medium Density Residential (R-2), or High Density Residential (R-3).
- (4) Place any goods, tables, blankets, booths or any type of food or merchandise for sale or any vending unit or other equipment used in vending on any public place or sidewalk, except a licensed food cart which meets all the following requirements:
 - (a) A food cart when fully opened for business shall not exceed, including all peripheral equipment and food and merchandise for sale, six feet in width by 10 feet in length and five feet in height, excluding only a canopy, awning or umbrella, with the top surface of the food cart and any seating for the person(s) tending the unit(s) at least 28 inches above the ground. Shopping carts shall not be allowed as vending units.
 - (b) Separate carts may be used in one operation, provided that when they are fully opened for business the total space occupied by said units does not exceed the maximum set forth in Subsection (4)(a) above, and provided further that the carts are kept adjacent to each other and that each separate cart is at all times tended by at least one person.
 - (c) All food carts shall be on rubber-tired wheels, at least four inches in diameter, with a leg or legs or brakes which shall keep the cart stationary when it is not intended to be moved, and which is fully mobile and able to be immediately moved by a single person tending the cart.
 - (d) Food carts shall have all peripheral equipment attached thereto, including seating, if desired, for the person tending the unit.
 - (e) Food carts shall have a self-contained and secure storage place for all food and merchandise and peripheral equipment used in the vending operation, so that the same can be quickly and safely stored if the vending unit has to be moved.
 - (f) No canopy, awning or umbrella shall be placed on a sidewalk in conjunction with vending activities, except that a food cart may have attached to it a canopy, awning or umbrella which is no greater in size than the maximum size set in Subsection (4)(a) above for a vending unit, and which is a minimum of 7 1/2 feet above the level of the sidewalk when opened if it extends beyond the sides of the cart itself and a maximum of nine feet above the

- level of the sidewalk when opened, provided that no canopy, awning or umbrella shall extend into a street tree or within two feet of the curbline.
- (5) Place, stop, operate or sell from a food cart on a public sidewalk, except on the curbside of the sidewalk and at least two feet from the curb.
 - (6) Place, stop, operate or sell from a food cart on a public sidewalk in such a manner that a portion of the sidewalk at least four feet in width is not maintained free and clear of obstructions to pedestrian traffic.
 - (7) Place, stop, operate or sell from a food cart on a public sidewalk:
 - (a) Within 10 feet of any other vending unit on a public sidewalk;
 - (b) Within 10 feet of a curb cut;
 - (c) Within five feet of a crosswalk;
 - (d) Within ten feet of a fire hydrant;
 - (e) Which abuts or obstructs a bus stop zone or shelter or is located within 60 feet in advance of a bus stop or shelter (on the side of the stop or shelter from which a bus approaches) or within 10 feet beyond a stop or shelter (on the side of the stop or shelter from which a bus leaves the stop or shelter);
 - (f) Within 10 feet of a street tree;
 - (g) Within two feet of a trash receptacle;
 - (h) Within two feet of a newspaper vending machine;
 - (i) Within two feet of an historic marker;
 - (j) Within five feet of a pedestrian bench;
 - (k) Within two feet of a sidewalk planter;
 - (l) Within two feet of a sidewalk grate or opening;
 - (m) Within two feet of a fire alarm box; or
 - (n) Within one foot of a light pole.
 - (8) Cry out or make loud noises in any public street, sidewalk or place for the purpose of selling any food or merchandise.
 - (9) Falsely or fraudulently misrepresent the quality, character or quantity of any article offered for sale or falsely or fraudulently represent services to be rendered or the cost thereof or offer for sale any unwholesome, tainted or diseased food or merchandise.
 - (10) Sell or offer for sale any food or merchandise which does not materially conform to any samples or models demonstrated or brochures or pamphlets given to a prospective customer as to size, materials, use, application and quality of workmanship.
 - (11) Chain or otherwise attach any signs, goods, merchandise, chairs, stools or food cart or other equipment used in vending to any tree, parking meter, hydrant, sign or post, light pole, telephone pole or other street appurtenance or leave any such items unattended on a public street, sidewalk or place. Items left in violation of this subsection shall be seized by the police.
 - (12) Place, stop, operate or sell from a food cart on a public street, sidewalk or place unless that food cart, including any canopy, awning or umbrella and all peripheral equipment, is maintained in a clean and neat condition, free of all stains, holes and rust, and with all wood surfaces painted, treated or varnished.
 - (13) Dispose of any litter or trash generated from the vending operation in public trash receptacles. Vendors shall store such litter or trash during the day in a trash receptacle firmly attached to the vending unit and carry the same with them at the end of the day. Vendors

shall also be responsible for keeping the immediate area of their food cart free and clear of any litter, trash or spillage from the unit.

- (14) Request or accept any tip or gratuity where no exchange of food or merchandise is made or no service is rendered.
 - (15) Conduct any vending activities in violation of any rule or regulation promulgated by the Chief of Police, Commissioner of Environmental Services or Fire Marshal pursuant to this chapter or by the Monroe County Health Department with respect to vending of food or food products.
 - (16) Sell, offer for sale or deliver goods or services from a sidewalk or alongside a roadway to an operator or occupant of a motor vehicle that is stopped, standing or parked on a street where stopping, standing or parking is prohibited.
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- E. Each food cart must at all times carry on the vehicle a measuring device with a measuring capacity of no less than 500 feet as a condition of its licensure.
 - F. No food cart shall operate within 100 feet of an approved food truck or food trailer location within the Center City, Marina and Harbortown Vending Districts.
 - G. No food cart shall operate within 100 feet of the closest point of any sidewalk café seating area approved by the Department of Environmental Services.
 - H. No food cart shall operate within 500 feet of the boundary line of any festival, special event or civic event that is permitted or sponsored by the City, except when the vendor has obtained a permit to so operate from the City.
 - I. No food cart shall operate in a location that has the effect of obstructing access to or egress from any structure or the free flow of vehicular and pedestrian traffic.
 - J. All food carts must be equipped with trash receptacles of a sufficient capacity that shall be changed as necessary to prevent overflow or the creation of litter or debris.
 - K. Nothing herein contained shall be construed so as to prevent any person having an established place for the transaction of business within said City from soliciting orders in such line of business from customers at such place of business or from taking orders by telephone when telephone orders are received at such place of business and from filling and delivering the same, nor so as to prevent the sale of newspapers or milk, the sale of the latter to be governed by the provisions of the law and ordinances applicable thereto.
 - L. The owner of a vending unit shall be responsible for the acts of any person working at that vending unit, and a license holder shall be responsible for the acts of any person while engaging in business through an identification badge issued under the license holder's license.
 - M. Each employee working on a food cart shall wear a visible employee identification badge issued by the City Clerk. The form of the badge shall be established by the City Clerk. Each employee working on a food cart shall complete a fire safety training program offered by the Rochester Fire Department within 60 days after commencing employment. At all times at least one employee on each food cart shall have completed the fire safety training program offered by the Rochester Fire Department. The City Clerk may issue a temporary employee identification badge for new employees.

§ 60-16. License required; application.

- A. Any person desiring to operate a food cart shall make a written application for such license to the City Clerk. The application for such license shall be on forms provided by the City Clerk, and shall include the following:
- (1) Name and address of each applicant and each corporate officer of the food cart vending corporation, or owner of an unincorporated business.
 - (2) Address of the commissary used in the supply and preparation of food for this food cart
 - (3) A valid copy of all necessary licenses, permits or certificates required by the County of Monroe, or the State of New York including.
 - (4) A copy of a valid certificate of authority issued by the New York State Department of Taxation and Finance empowering the applicant to collect both the New York State sales and compensating use taxes.
 - (5) All license applicants shall be required to consent to a background check by the Rochester Police Department. A license application may be denied by the Chief of Police if the background check demonstrates that the applicant has been convicted of criminal offenses that have a direct relationship to the license or that would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. Any decision to deny an application for this reason shall be made in compliance with Article 23-A of the Correction Law after considering the factors set forth in that law. An applicant who is denied shall be entitled to a hearing in the manner provided for a revocation of a license by Chapter 68 of the Municipal Code.
 - (6) All license applicants and applicants for renewals thereof shall present each food cart to the Fire Department to determine that the vehicle meets all applicable New York State Fire Codes and rules and regulations required by the Fire Marshal. The Fire Marshal is hereby authorized to promulgate such additional rules and regulations as may be necessary to assure the fire safety of vending units.
 - (7) License applicants must have a current permit from the Monroe County Department of Health and must comply with all laws, rules and regulations of said Department.

§ 60-17. Insurance.

Before any license authorized herein shall be issued, the applicant shall file with the City proof of insurance, issued by an insurance company licensed to do business in the State of New York and approved by the Director of Finance as to form, which insurance must be kept continuously in force during the term of the license. At the time of application, applicants shall provide proof of insurance that extends for the entire license period. The insurance shall be not less than \$1,000,000 comprehensive/general liability insurance. Such insurance shall not expire, nor be canceled, altered or amended except on 10 days' written notice to the City Treasurer served personally or by certified mail. Municipal operations, employees and property shall not be excluded from coverage. The insurance must name the City as an additional insured party.

§ 60-18. Form and condition of license.

Every food cart vending license shall contain the following conditions:

- A. Each food cart vending license shall expire on December 31 of every year.
- B. The license shall not be transferable from person to person without the written approval of the City Clerk.
- C. The license is valid for one food cart only.
- D. There shall be issued to each vendor a suitable decal or tag that shall be permanently and prominently affixed to the food cart .

§ 60-19. Fees.

- A. Application- A nonrefundable fee of \$7 shall be required for the receipt of application materials. Said fee shall be credited toward the license fee upon submission of an application.
- B. License- all food cart vendors shall pay an annual fee of \$250 for each license, except that vendors applying for a license that includes the Center City, Marina and Harbortown Vending Districts shall pay an annual fee of \$750. Vendors that operate a business in the Center City, Marina and Harbortown Vending Districts shall be entitled to a one-third discount of the license fee to vend in an approved location outside their business.
- C. Temporary Permits- any food cart wishing to vend at one or more Special Events and that does not have a license shall apply to the City Clerk for a Temporary Food Cart Permit and pay a fee of \$100 for a permit valid for the calendar year. Any food cart wishing to vend at a single Special Event and that does not have a license shall apply to the City Clerk for a Three Day Temporary Food Cart Permit and pay a fee of \$56 for a permit valid for that event. Such a permit shall allow vending only during and at the location of a Special Event.
- D. Employee identification badge- all food cart vendors shall pay a fee of \$24 for each employee identification badge except that one badge shall be issued with the license at no cost.
- E. Replacement license or employee identification badge- all food cart vendors shall pay a fee of \$10 for each replacement license or employee identification badge.
- F. Vendors who are eligible veterans and who have a Soldiers' and Sailors' Certificate issued by the Monroe County Clerk pursuant to Section 32 of the General Business Law or who are disabled veterans as defined by Section 35 of the General Business Law holding such a Certificate are shall be exempt from the fees contained in this section.

§ 60-20. Food cart vending locations.

- A. No food cart shall be operated in the Center City, Marina or Harbortown Vending District except in a location spaces approved by the City Clerk through a lottery.
- B. No food cart shall be operated in a location outside the Center City, Marina or Harbortown Vending District except in a location approved by the Rochester Police Department.

§ 60-21. Parades and special events; parks.

- A. The Chief of Police is authorized to promulgate rules and regulations governing vending during parades and special events in the City. Such rules and regulations may require vending activities to be conducted in areas located so that citizens may be able to have unobstructed views of the parade or special event. In conjunction with such activities, including any street closing for a special event, the Chief of Police may suspend the applicability of the regulations found in this chapter to allow for the operation of the special event.
- B. The Commissioner of Recreation and Youth Services shall establish requirements for food cart in parks regulated by the City. Any food cart operating in a park regulated by the City shall have a valid license or Temporary Permit pursuant to this Chapter.
- C. The County of Monroe shall establish requirements for food carts in parks regulated by the County.

§ 60-22. Food cart vending at Special Events.

- A. Any food cart vending at a special event that is sponsored by the City or granted a permit by the City ("a Special Event") shall have either a license issued pursuant to this Chapter or a Temporary Food Cart Permit issued by the City Clerk, or a Three Day Temporary Food Cart Permit issued by the City Clerk.
- B. Any Temporary Food Cart Permit applicant shall be required to complete a fire safety inspection and fire safety training by the Rochester Fire Department and also submit a valid copy of all necessary licenses, permits or certificates required by the County of Monroe, or the State of New York including, but not limited to, a copy of a valid certificate of authority issued by the New York State Department of Taxation and Finance empowering the applicant to collect both the New York State sales and compensating use taxes, and a current permit from the Monroe County Department of Health and must comply with all laws, rules and regulations of said Department, and shall submit proof of insurance coverage that meets the requirements of Section 60-17.

§ 60-23. General licensing provisions; revocation of licenses.

- A. The provisions of City Code Chapter 68: Licenses-Business and Trades, being general licensing provisions relating to business and trades, shall be applicable to all licenses under this chapter the same as if specifically set forth herein.
- B. The Chief of Police shall revoke, without a hearing, the license of any person found guilty of five or more violations of this chapter during any period of two years. Nothing herein shall prevent the Chief of Police from revoking a license of any person with fewer than five violations, on written charges and an opportunity for a hearing thereon, pursuant to City Code Section 68-10: Revocation of Licenses and Permits.

§ 60-24. Penalties.

A person violating any section of this chapter shall be subject to the penalties set forth in City Code Section 13A-11: Penalties for Offenses.

§ 60-25. Severability.

If any provision of this chapter is declared invalid or unconstitutional for any reason, the remaining provisions shall be severable and continue in full force and effect.