

Offered by Councilor Michael P. Ross and Salvatore LaMattina

CITY OF BOSTON

IN THE YEAR TWO THOUSAND ELEVEN

An Ordinance Promoting Economic Development and the Food Truck Industry in the City of Boston

WHEREAS, The food service industry may be the world's most widespread industry, including restaurants establishments such as fast-food eateries, formal dining and mobile trucks; and,

WHEREAS, According to the U.S. Bureau of Labor Statistics, the food services and drinking places industry ranks among the Nation's leading employers with nearly 10 million wage and salary jobs; and,

WHEREAS, Recently, mobile food units have become extremely popular and profitable in urban settings such as Los Angeles, New York, Houston, Philadelphia, San Francisco, Atlanta, Seattle, Miami, Austin, Portland and Washington D.C. to name a few; and,

WHEREAS, The mobile food industry has the unique potential to create new employment opportunities, small business growth and favorable conditions for culinary entrepreneurs in Boston and its neighborhoods; and,

WHEREAS, According to the National Restaurant Association, there is an increasing demand, particularly among people 18 to 44, for freshly prepared, restaurant-quality food that can be had quick and cheap; and,

WHEREAS, Research has revealed that cities around the country have, at best, made incremental strides in regulating the complexities of the mobile food vendor industry, including efforts to find solutions to problems created by the industry, such as issues around parking, traffic and waste disposal; and,

WHEREAS, Vendors in the mobile industry have faced complex rules and regulations in other communities, the following language is being set forth to streamline administrative processes, effectively work with the industry and secure the highest quality of life for all Bostonians; NOW,

Be it ordained by the City Council of Boston, as follows that the City of Boston Code be amended by adding the following ordinance:

SECTION 1. CBC Chapter XVII is hereby amended by striking out Section 17-10 RESERVED in its entirety and inserting in place thereof the following:--

17-10 Permitting and Regulation of Mobile Food Trucks

17-10.1 Definitions

When used in this section, unless the context otherwise requires, the following terms shall have the following meanings:

- a. *The Committee* shall mean the Commissioner, the Director of Food Initiatives, and the Departments, as defined.
- b. *Commissioner* shall mean the Commissioner of Public Works of the City of Boston or his or her designee.
- c. *Departments* shall mean the Transportation Department, the Inspectional Services Department, the Police Department, the Fire Department, and the Assessing Department, all of the City of Boston.
- d. *Food Establishment* shall mean a business operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption as set forth in the State Sanitary Code 105 CMR 590.002.
- e. *Mobile Food Vehicle* shall mean a food establishment that is located upon a vehicle, or which is pulled by a vehicle, where food or beverage is cooked, prepared and served for individual portion service, such as a mobile food kitchen; provided however that a mobile food vehicle shall not be considered a food service establishment for the purposes of CBC 18-1.6(39).
- f. *Mobile Food Truck* shall mean a mobile food vehicle.
- g. *Mobile Food Commissary* shall mean a licensed food establishment that a mobile food truck reports to twice daily for all food and supplies and for all cleaning and sanitizing of units and equipment.

17-10.2 Scope

- a. The provisions of this section shall apply to mobile food operations engaged in the business of cooking, preparing, and distributing food or beverage with or without charge from mobile food trucks on or in public, private or restricted spaces. This section shall not apply to canteen, coffee, or ice cream trucks that move from place to place and are stationary in the same location for no more than thirty (30) minutes at a time or food vending push carts and stands.
- b. The provisions of this section shall not apply to mobile food operations that receives a temporary event permit issued by the Public Works Department.

17-10.3 Mobile Food Trucks Committee

- a.* There shall be within the City of Boston a Mobile Food Trucks Committee consisting of the Public Works Department, the Transportation Department, the Inspectional Services Department, the Police Department, the Fire Department, the Director of Food Initiatives and the Assessing Department for the purpose of reviewing applications for mobile food truck permits and establishing rules and regulations as appropriate.
- b.* The Committee may work with an industry-led taskforce in developing acceptable routes of operation throughout the city and establishing industry standards, such as the use of global positioning system (GPS) devices and other matters.
- c.* The Committee may work with applicants for Mobile Food Truck permits and renewals to encourage the following:
 - i.* Sustainable and environmentally friendly practices, including the use of energy-efficient vehicles,
 - ii.* Charitable components to the business of operation,
 - iii.* School nutrition programs or healthy food choices,
 - iv.* Programs for children or the homeless,
 - v.* Other socially responsible practices and programs,
 - vi.* Routes that provide access to underserved neighborhoods of the city, and
 - vii.* The use of food commissaries within the city.

17-10.4 Mobile Food Truck Permit Required

- a.* No person or business entity, including a religious or charitable organization, shall operate a mobile food truck in any public, private or restricted space without a permit issued by the Committee.
- b.* A mobile food truck permit is required for each and every mobile food truck.

17-10.5 Application for a Mobile Food Truck permit

- a. Single Application.* There shall be made available by the Commissioner a single application form to apply for each mobile food truck permit. The application shall provide the following:
 - 1. A description of necessary inspections and fees;
 - 2. A description of areas of the City where the operation of mobile food trucks are limited or prohibited;
- b. Submission of Materials.* Each application shall indicate on its face, in addition to other requirements as may be determined by the Committee, that the following materials must be submitted by the applicant:
 - 1. The name of the business and its owner or owners and the mailing address of the business,

2. A description of the proposed business plan for the mobile food truck operation,
 3. A proposed service route and hours of operation with a detailed schedule of times and locations where the mobile food truck will be stationary and serving food,
 4. Certification that the vehicle has passed all necessary inspections required by the Boston Fire Department and Department of Inspectional Services,
 5. Proof that the Mobile Food Truck will be serviced by a mobile food commissary,
 6. Proof of access to restroom facilities with flushable toilets and access to hand washing facilities for the use of the mobile food truck employees within five hundred (500) feet of each location where the mobile food truck will be in operation for more than one (1) hour in any single day, and
 7. A certificate of insurance providing general liability insurance listing the City as additionally insured. A food truck permit shall be issued only for the explicit time period covered by the effective dates of the general liability insurance policy.
- c. *Approval Process.* An application must be submitted to the Commissioner of Public Works, who shall then forward the application to the Departments for review. The application must receive the approval of each of the Departments, based on duly published criteria established by the Committee, prior to its final approval and the issuance of a permit by the Commissioner.
1. The Committee may work with the applicant or permit holder to modify a service route at any time (i) before the issue of a permit or (ii) after the issue of a permit, if the grant of a permit or approval of a service route has led to the creation of a nuisance or otherwise endanger the public health, safety, or order or by request of the permit holder.
 2. Within sixty (60) days of the submission of a completed application, the Commissioner shall either issue or deny the application for a permit.
 3. If the application is denied in whole or in part, the Commissioner shall state the specific reasons for the denial. Any applicant who has been denied a permit may appeal such denial by submitting a written request for a hearing to the Commissioner within ten (10) days of denial. Such hearing shall be conducted by the Commissioner or his or her designee within thirty (30) days of receipt of said appeal. The decision resulting therefrom shall be final and subject only to judicial review under M.G.L. c. 30A, § 14.

17-10.6 Limitation on the Number of Permits

The Committee may from time to time set a limit on the number of total permits that may be issued or renewed per year; provided, however, that no more than ten percent (10%) of total permits or five (5) permits, whichever is greater, may be issued to a single person or

business entity or both. Upon receipt of application, the Commissioner or his or her designee shall advise the applicant whether or not the limitation has been met.

17-10.7 Permit Renewal

- a.* Every mobile food truck permit, unless suspended or revoked by the Committee for a violation of any provision of this section or other rule or regulation promulgated for the implementation of this section, shall be renewed annually given that a renewal fee is paid within thirty (30) days after its one year expiration, at which time the permit holder shall forfeit the right to renew and the permit may be made available to another applicant for new permit if the limitation on the number of permits has not been reached.
- b.* The renewal of a permit does not also guarantee renewal of the previously approved route. The Committee reserves the right to add, remove, and reapportion available locations among mobile food truck operations at renewal.

17-10.8 Rules and Regulations

- a. General.* The Committee members are hereby authorized to promulgate, both jointly and within their respective departments, additional rules and regulations appropriate for the implementation of this section, and, if necessary, work with other agencies and departments of the city and state to establish a streamlined process for the permitting of mobile food trucks; provided, however, that such rules and regulations are not inconsistent with the following limitations and restrictions:
 1. No operator of a mobile food truck shall park, stand, or move a vehicle and conduct business within areas of the city where the permit holder has not been authorized to operate;
 2. No permit holder shall possess a permit for a mobile food truck that is not in operation for a period of more than fourteen (14) days without duly notifying and obtaining approval from the Commissioner.
 3. The issuance of a permit does not grant or entitle the exclusive use of the service route, in whole or in part, to the mobile food truck permit holder, other than the time and place as approved for the term of the permit;
 4. No mobile food truck shall provide or allow any dining area, including but not limited to tables, chairs, booths, bar stools, benches, and standup counters, unless a proposal for such seating arrangements is submitted with the permit application and approved by Committee.
 5. Consumers shall be provided with single service articles, such as plastic forks and paper plates, and a waste container for their disposal. All mobile food trucks shall offer a waste container for public use that the operator shall empty at his own expense.
 6. The permit holder must keep an accurate log indicating that the mobile food truck is serviced at least twice daily by a mobile food commissary for all food,

water and supplies and for all cleaning and servicing operations, including the emptying and cleaning of waste containers.

7. No mobile food truck shall make or cause to be made any unreasonable or excessive noise in violation of CBC 16-26.1.
 8. A mobile food truck may not operate on public property unless the Commissioner and the Departments have otherwise granted approval on the permit application for its operation at the particular location during specific times.
 9. All mobile food trucks must be equipped with a permanently mounted global positioning system (GPS) device that meets rules and regulations established by the Committee or its members.
 10. For mobile food trucks on public property, the City reserves the right to temporarily move a mobile food truck to a nearby location if the approved location needs to be used for emergency purposes, snow removal, construction, or other public benefit.
- b. Inspectional Services.* The Inspectional Services Department shall ensure compliance with the State Sanitary Code 105 CMR 590.
- c. Fire Department.* The Boston Fire Department shall promulgate rules and regulations for the inspection of mobile food trucks and to ensure compliance with all applicable federal, state, and local fire safety statutes, regulations, ordinances, and codes.

17-10.9 Permit Fees

- a. *Application Fee.* The application fee for a permit or a renewal of a permit granted by the Committee for the operation of a mobile food truck shall be five hundred dollars (\$500).
- b. *Annual Fee.* An annual fee shall be required for the issuance or renewal of a mobile food truck permit based on a taxable market valuation of city property by the Assessing Department, including sidewalks, from which mobile food trucks will stand according to a route of operation submitted with an application for a mobile food truck permit. Nothing in this section shall prohibit the Committee from designating zones throughout the city for the purposes of establishing fees and rates.

17-10.10 Prohibition Against the Transfer of a Permit.

- a. *Transfers for value prohibited.* No person holding a permit for a mobile food truck shall sell, lend, lease or in any manner transfer a mobile food truck permit for value.
- b. *Nonvalue transfers as part of the sale of a business.* Notwithstanding subsection 17-10.10(a), a permit holder may transfer a permit as part of the sale of a majority of the stock in a corporation holding such permit, as part of the sale of a majority of the membership interests of a limited liability company holding such permit, or as part of

the sale of a business or substantially all of its assets; provided that there shall be no allocated or actual value for the transfer of the permit.

1. Prior to any such transfer, the transferor shall notify the Committee in writing and the transferee shall submit a food truck permit application for approval to the Committee pursuant to the process set forth in subsection 17-10.5 and any additional rules and regulations promulgated by the Committee.
 2. Any such transfer shall be subject to the terms and conditions of the original permit.
- c. *Unauthorized transfer voids permit.* Any unauthorized transfer or attempt to transfer a permit shall automatically void such permit. Whoever violates this provision, including both the transferor and transferee, shall be subject to a fine of three hundred (\$300) dollars, pursuant to section 17-10.12(a). The unauthorized transfer or attempt to transfer of each permit shall constitute a separate violation.

17-10.11 Operation of Mobile Food Trucks

- a. *Operation without permit.* Any mobile food truck being operated without a valid mobile food truck permit issued by the Commissioner shall be deemed a public safety hazard and may be ticketed and impounded.
- b. *Unattended Vehicles prohibited.* No mobile food truck shall be parked on the street overnight, or left unattended and unsecured at any time food is kept in the mobile food truck. Any mobile food truck which is found to be unattended shall be considered a public safety hazard and may be ticketed and impounded.
- c. A mobile food truck operating outside of an approved route, at an unauthorized location, or beyond the hours for which the operation has been permitted shall be deemed operating without a permit in violation of this section and may be subject to enforcement under subsection 17-10.12.

17-10.12 Enforcement

- a. *Fine for Violation.* Any permit holder operating a mobile food truck or service in violation of any provision of this section or any rules and regulations promulgated by the Committee may be subject to a fine of three hundred (\$300.00) dollars per day. Each day of violation shall constitute a separate and distinct offense. The provisions of G.L. c. 40, s. 21D may be used to enforce this section.
- b. *Revocation, Suspension, Modification.* Once a permit has been issued it may be revoked, suspended, modified, or not renewed by the Commissioner for failure to comply with the provisions of this section or any rules and regulations promulgated by the Committee.
 1. No permit shall be revoked, suspended, modified, or not renewed without a hearing before the Commissioner or his or her designee, prior to which hearing the Commissioner or his or her designee shall give reasonable notice of the time and place of the hearing and the specific grounds of the proposed action. The

decision resulting therefrom shall be final and subject only to judicial review under M.G.L. c. 30A, § 14.

2. The Commissioner or his or her designee may suspend a permit for no more than three (3) days without a notice or hearing, pursuant to subsection 17-10.12(b)(1), if the Commissioner or his or her designee specifically notifies the permit holder in writing that there is a probability of violation of public safety, health or order. In such a case, a hearing shall be held before the Commissioner or his or her designee within forty-eight (48) hours of the suspension in order to determine whether the public safety, health or order concern justified the suspension.
 - c. *Removal.* Any permit holder found in violation of this section or any rules and regulations promulgated by the Committee may be issued a ticket for violation and the mobile food vehicle may be impounded.
 - d. *Enforcement.* The provisions of this section or any rules and regulations promulgated by the Committee may be enforced jointly by the Boston Police Department and the Boston Transportation Department.

17-10.13 Severability

If any provision of this section is held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

SECTION 2. Notwithstanding any provision of this Ordinance to the contrary, existing mobile food permits lawfully issued to mobile food trucks, as defined in CBC chapter XVII, subsection 17-10.1, by the City of Boston Division of the Health Inspections prior to the passage of this section shall remain effective until December 31, 2011 and any such mobile food truck operation shall be exempt from the provisions of CBC chapter XVII, section 17-10 until January 1, 2012.

SECTION 3. The provisions of this section shall take effect immediately upon thirty (30) days of passage.