

Memorandum

Date: April 20, 2018
To: Nathan Poore, Town Manager
Ordinance Committee
From: Amanda L. Stearns, Land Use Policy Specialist
Cc: Ethan Croce, Community Development Director; Ellen Planer,
Town Clerk; Linda Case, Deputy Town Clerk; Justin Brown, Code
Enforcement Officer and Dawn Emerson, Land Use Planner
Re: Mobile Food Vendors

The Ordinance Committee has completed its review ART. II-8-4, Food Service Establishments and attached is the recommended amendments to reflect the current practice of issuing mobile food vendor licenses as well as practices for issuance of victualer's licenses for periodic and permanent food service establishments. The following comments summarize the legal basis and general conclusions drawn by the committee in their review and development of a new ordinance.

Legal Basis: It is necessary to draw a bright line between permanent land uses that are governed by zoning and temporary uses that may be permitted by license or other means. The key difference is temporary uses, by definition, must be limited by time, both by permit and by physical presence. Otherwise the use is functioning as a permanent land use regardless of the physical nature of the operation (i.e. using a truck or trailer rather than a building)

Permanent land uses go through zoning review and establish property rights provided they conform with the ordinance requirements. Regarding restaurants, this may include site plan review, requires inspections to conform with building and safety codes and a Certificate of Occupancy.

Decision Summary for Mobile Food Vendors

1. **Duration** – permits must include prescribed dates for use. Vehicles should be removed from the site daily at the close of business unless it is approved for a special event as a caterer or something similar.
2. **Location** - license should include specific locations of operation
3. **Hours of Operation** – license should include specific hours of operation
4. **Amenities** – In order to draw a bright line between mobile and permanent, no amenities are allowed such as tents and picnic tables.
5. **Utilities** – The food vendor should be completely self-contained with the exception of electrical service on a daily basis to afford the need to run a generator.
6. **Relationship to permanent land use on site** – Food vendors would not be required to provide extra parking but must not interfere with permanent land uses on a site.
7. **Signage** – Signage would either be on the vehicle (regulated by the state) and as allowed by either the permanent or temporary sign ordinance.
8. **Public Health** – The town would continue to rely on the state for a current Health Certificate to allow operation.
9. **Public Safety** – All applications would require review by Public Works, Community Development (Codes and Planning), Fire EMS and Police prior to being considered by the Council.

10. **Vehicle Registration** – the vehicles used for food vending should be registered, insured and inspected.
11. **Administration** – It is suggested that the permitting process be moved to Community Development. Unlike liquor licenses they require a review more akin to minor site review and will be enforced by the Code Enforcement Officer.
12. **Fees** – fees should be increase from the current \$25.00 to \$250.00. This should cover the administrative time to process the application, public notice and permitting. Renewals are recommended to have a reduced fee.
13. **License** – The Council will approve a license and the CEO would issue a physical license that is required to be kept in the vehicle at all times and available for inspection.

Ordinance Drafting, General

1. Delete the duplications with food service and victualers licenses by deleting the victualers license section.
2. Remove all language regarding sanitation and depend on the state Health Certificate to assure that the vendor is meeting all health and sanitation requirements. We do not currently inspect as we do not have staff that are adequately trained or where it is an assigned responsibility.
3. Remove the requirement that mobile food vendors need to have a base station.

The following pages contain the history of the review of this subject since 2012.

History – Background from 2012 to present.

The Town Council began its discussion on mobile food service in 2012 when an application raised concerns about abutting businesses and competition. The application was ultimately approved in a different location. This matter was referred to the FEIC who reviewed the subject and came back to the Council with no recommendation. The matter assigned to the Ordinance Committee in the 2105-2016 Council work plan. The Ordinance Committee (Russ Anderson, Ned Kitchel and Charlie McBrady) met in February 2016 and at that time decided to support amendments that would allow vendors in the manner being permitted under licenses today. These are not mobile vendors as intended by the ordinance but temporary uses of land for vending as the vendors remain in one spot for extended periods of time. The license issued allows for the vendor to remain in one place for a full year. Due to staff constraints, this amendment work was not completed in Council year 2015.

The current OC met in August of 2016 and decided to prioritize other items so mobile food vendors have not been discussed during the remainder of this year. The remainder of the memo is from the 2016 meeting. You may recall that one of the issues was the ability of the Council to permit outdoor seating.

Amy Tchao, Ellen, Linda and Justin and I met several times in 2016 to develop a recommended strategy for addressing the regulations around mobile food service establishments (term used in our Code of Ordinances). It is our recommendation that if mobile food service establishments are a desired use in the town, the Council develop an ordinance that addresses all aspects of the use.

Background

The current town ordinances (8-4 and 8-5) govern food service establishments and include all types of establishments that prepare, store, sell or distribute food. Section 8-4 addresses sanitation and health only and Section 8-5 requires a license. These ordinances do not address any aspects of a physical site such as parking, egress or signage. Both sections require a license, which appears duplicative. It is the practice of the Town to only require one license under Section 8-5.

All the types of establishments that require a license are associated with a particular location except for mobile food service establishments. Establishments in permanent structures may require site plan review or a building permit, both which include zoning review. For non-permanent establishments (there are three types: periodic {in a permanent structure}, temporary {associated with a temporary event and for less than two weeks} and mobile {capable of being transported from place to place}) a license is required by the Town Council. The ordinance is silent on the length of time that a mobile unit may be located, but does give us some direction that it is intended to be able to be moved from place to place and is more mobile than a temporary use which would mean in one location for less than two weeks. (See definition of mobile food service unit – “a motor vehicle, trailer or like conveyance capable of being transported from place to place . . .”)

Practice and Current Requirements

Licensing – As mentioned above Section 8-4 and Section 8-5 both require a license, but only one is issued. The ordinance addresses licenses in two areas (8-153 and 8-250) that appear to be duplicative in most aspects but are not identical. The most obvious difference is that one is issued by the Town Clerk and has no mention of the Council process or the need of a hearing and the other is “granted by the Town Council” but has no mention of a hearing being required. Obviously, it is the practice of the Council to hold a hearing and if desired to continue, should be codified. The current Town Clerk inherited this practice and administers the application process based on this practice.

Health Inspections – The ordinance requires the town’s Health Inspector to inspect and find conformance with all standards listed. We do not have trained inspectors and currently rely on the vendor to submit a copy of their HHE602, State Health Inspection Program License. It is required to be renewed every year and the state inspects prior to each renewal. Section 8-153, License required, states that “[a]pplication for [a] license...when submitted to the town council shall bear the requirements for approval or disapproval of the health officer and such other departments as may be required by the town council or other codes of the town.” This implies that the full health inspection has already occurred. For permanent establishments, this would clearly imply that any zoning, site plan review, certificate of occupancy or other approvals have already been issued.

Attachment to a Mobile Food Service Base Station – The current ordinance requires that all mobile food units be “attached” to a base station. Base station is defined as “...a permanent location with an area for the loading and cleaning of mobile units and with a separate area for the preparation and storage of food for use in mobile units.” This requirement has not been enforced for licenses.

Siting Requirements – The current ordinance does not have standards regarding location of a mobile food unit or what amenities might be allowed. It is recognized that through the review of mobile units, the Council has been increasingly interested in site aspects of the vendor such as proximity to other permanent restaurants, sight distance and times of operation as the requests have been to locate in a particular location for an extended period of time. Our ordinance governing the licensing of food service establishments does not instruct the applicant to address any of these issues in their application nor does it have standards related to land use or site impacts. Site-specific concerns such as parking, outdoor seating, signage are more traditionally left to the Planning Board to address through the site plan review process under Article 19 of the Code of Ordinances.

The nature of the most recent application and the request for outdoor seating as well as continued discussions about an evolving business at a particular location brings to light issues that previous applications did not. This is the first “mobile” unit that has requested use of permanent signs. The result is that the bright line that might be drawn between “temporary or mobile use” licensed by the Council on an annual basis and the role of zoning and establishment of permanent land use rights begins to blur. With regard to outdoor seating (including seasonal outdoor seating), it is listed as a Conditional Use in the Zoning and Site Plan Review Ordinance requiring approval by the BZA and is required to be associated with a primary use. This does not preclude the Council from amending the Code to allow mobile units from having certain temporary amenities but it illustrates the importance of drawing that bright line so that a use approved under zoning and one issued an annual license by the Council are clearly different.

Other Communities

Many surrounding communities such as Freeport, Yarmouth, and Portland to name a few have detailed Peddler’s Ordinances that address not only site aspects but duration, location, hours of operation, etc. These peddlers are not always limited to food. There are an equal number of surrounding communities that do not permit any version of mobile food units.