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## SECTION 4 (B): MOBILE FOOD TRUCKS

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### Definitions

***Board of Health:***

Shall mean the City of Newburyport Board of Health

***Director:***

Shall mean the City of Newburyport Director of Public Health

***Departments:***

Shall mean the Mayor's Office, Building Department, Fire Department, Police Department and Planning Department all of the City of Newburyport

***Food Establishment:***

Shall mean a business operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption as set forth in Food Codes.

***Food Codes:***

State Sanitary Code 105 CMR 590.002.

***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. Mobile Food Vehicle shall mean a Mobile Food Kitchen

***Mobile Food Kitchen:***

Shall mean a mobile food vehicle.

***Mobile Food Commissary:***

Shall mean a licensed food establishment that a Mobile Food Kitchen reports to twice daily for all food and supplies and for all cleaning and sanitizing of units and equipment.

### 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 Kitchens 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.

### Mobile Food Kitchen Permit Required

- a. No person or business entity, including a religious or charitable organization, shall operate a Mobile Food Kitchen in any public, private or restricted space without a permit issued by the Newburyport Board of Health or the Director of Public Health
- b. A Mobile Food Kitchen permit is required for each and every Mobile Food Kitchen.

#### **Application Package for a Mobile Food Kitchen permit**

- a. *Application Package.* There shall be made available by the City Health Department an application package & forms to apply for each Mobile Food Kitchen permit. The application shall provide the following:
  - 1. A Procedure for Obtaining a Mobile Food Permit
  - 2. An Application for Mobile Food Kitchen Plan Review & Fee
  - 3. An Application for Mobile Food Kitchen Permit to Operate & Fee
  - 4. A description of areas of the City where the operation of Mobile Food Kitchens 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 Board of Health or Director, 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 Kitchen operation,
  - 3. A proposed service route and hours of operation with a detailed schedule of time and locations where the Mobile Food Kitchen will be stationary and serving food – As determined by the Board of Health or Director
  - 4. Certification that the vehicle has passed all necessary City inspections required by the  
City Departments: Health Department, Fire Department and Building  
Commissioner (Gas, Plumbing and Electrical)
  - 5. Proof that the Mobile Food Kitchen will be serviced by a mobile food commissary or permitted food establishment that is approved by the Board of Health or Director of Public Health– Verification letter from licensed commissary or food establishment required.
  - 6. Proof of access to restroom facilities with flushable toilets and access to hand washing facilities for the use of the Mobile Food Kitchen employees within five hundred (500) feet of each location where the Mobile Food Kitchen will be in operation for more than one (1) hour in any single day, and
  - 7. Proof of Mobile Food Kitchen physical service invoices: Final location for disposal of solid waste, grey water, fats, oils and grease.
  - 8. Proof of (IPM) Integrated Pest Management plan and proof of compliance with F.O.G. requirements (collection and disposal of fats, oils and grease)– Mobile Food Kitchen is being inspected and serviced 1x a month.
- c. *Approval Process.* An application must be submitted to the City Health Department or Director of Public Health. Upon receipt the application shall be dated and time-stamped

and forwarded to the Board of Health for review at its next regular monthly meeting. The application must receive prior approval of each of the Departments, (approvals shall be based on duly published criteria established within the application package.) Once final approval is granted by the Board of Health, the Director of Public Health shall issue a permit to operate.

1. The Board of Health or Director of Public Health 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 granting of a permit or approval of a service route has led to the creation of a nuisance or if it otherwise endangers the public health, safety, or order or by request of the permit holder.
2. Within thirty (30) days of the submission of a completed application, the Board of Health or the Director of Public Health shall either approve or deny the application for a permit to operate.
3. If the application is denied, in whole or in part, the Director of Public Health shall state the specific reason(s) 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 Board of Health within ten (10) days of denial. Such hearing shall be conducted by the Board of Health or the Director of Public Health 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.

### **Limitation on the Number of Permits**

The Board of Health or Director of Public Health may allow and set a limit on the number of total permits that may be issued or renewed per year in the City up to three(3). Upon receipt of application, the Director of Public Health or his or her designee shall advise the applicant whether or not the limitation has been met.

### **Location of Permits:**

- a. Yearly Mobile Food Kitchen permits will be restricted from the downtown business district with the exception of temporary permits for festivals. Accepted locations to operate include the Newburyport Business & Industry Park, entrance to the Clipper City Rail near the MBTA station, the north end of plum island at the public parking lot, the mall in the area of Greenleaf and Auburn Street, High Street at three roads, Cashman Park and the Boat ramp, entrance to the clipper City Rail at Washington Street, Moseley Woods, and Maudslay State Park provided approvals are obtained from the appropriate City Board or Commission or other agency with oversight. The Board of Health and/or Health Director may designate other appropriate locations as they deem appropriate and convenient for the public good
- b. Temporary Mobile Food Kitchen permits shall not to exceed 14 days( City annual festivals and or events approved by the Board of Health) will be restricted to a designated area approved by the Board of Health and or the Director of Public Health based on the public health and safety

### **Permit Renewal**

- a. Every Mobile Food Kitchen permit, unless suspended or revoked by the Board of Health or the Director of Public Health 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 application is approved and Annual Permit Fee is paid within thirty (30) days after its one year expiration, after 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.

## **Rules and Regulations**

- a. *General.* The Board of Health and the Director of Public Health are hereby authorized to promulgate additional rules and regulations appropriate for the implementation of this regulation 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 Kitchens; provided, however, that such rules and regulations are consistent with the following limitations and restrictions:
  1. No operator of a Mobile Food Kitchen 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 Kitchen that is not in operation for a period of more than fourteen (14) days without duly notifying and obtaining approval from the Board of Health and or the Director of Public Health
  3. The issuance of a permit does not grant or entitle the exclusive use of this service route, in whole or in part, to the Mobile Food Kitchen permit holder, other than the time and place as approved for the term of the permit;
  4. No Mobile Food Kitchen shall provide or allow any dining area, including but not limited to tables, chairs, booths, bar stools, benches, and standup counters.
  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 Kitchens 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 Kitchen is serviced at least twice daily by either an approved food service establishment or 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 Kitchen shall make or cause to be made any unreasonable or excessive noise.
  8. A Mobile Food Kitchen is prohibited from operating at any other location and times within the City other than the approved location and times granted by the Board of Health on the permit application.
  9. The City reserves the right to temporarily move a Mobile Food Kitchen to a nearby location if the approved location needs to be used for emergency purposes, snow removal, construction, or other public benefit.

- b. *City Health Department.* The City Health Department shall ensure compliance with the Massachusetts State Sanitary Code 105 CMR 590 “Minimum Standards for Food Establishment” and the U.S Department of Health & Human Services Food and Drug Administration 1999 Federal Food Code
- c. *Fire Department.* The Fire Department may promulgate rules and regulations for the inspection of Mobile Food Kitchens and to ensure compliance with all applicable federal, state, and local fire safety statutes, regulations, ordinances, and codes.
- d. *Building Department.* The Building Department may promulgate rules and regulations for the inspection of Mobile Food Kitchens to ensure compliance with all applicable federal, state, and local Building statutes, regulations, ordinances, and codes.

### **Permit Fees**

- a. *Mobile Food Establishment Plan Review Fee.* The application fee for a plan review for a Mobile Food Kitchen shall be one hundred and fifty dollars (\$150.00).
- b. *Annual Permit to Operate Application Fee.* The application fee for a permit or a renewal of a permit granted by the Director of Public Health for the operation of a Mobile Food Kitchen shall be three hundred fifty dollars (\$350.00). The Annual Permit Fee will cover the cost of routine inspections (one inspection every six months.) If a re-inspection is necessary, the Permit Holder shall be required to pay the \$35.00 re-inspection fee.

### **Prohibition Against the Transfer of a Permit.**

- a. *Transfers for value prohibited.* No person holding a permit for a Mobile Food Kitchen shall sell, lend, lease or in any manner transfer a Mobile Food Kitchen permit for value.
- b. *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 one hundred (\$100.00) dollars, pursuant to Chapter 1 Section 1.19.001 of the City Health Department Rules and Regulations. The unauthorized transfer or attempt to transfer of each permit shall constitute a separate violation.

### **Operation of Mobile Food Kitchens**

- a. *Operation without permit.* Any Mobile Food Kitchen being operated without a valid Mobile Food Kitchen permit issued by the Board of Health or Director of Public Health shall be deemed a public safety hazard and may be ticketed and impounded.
- b. *Unattended Vehicles prohibited.* No Mobile Food Kitchen shall be parked on the street overnight, or left unattended and unsecured at any time food is kept in the Mobile Food Kitchen. Any Mobile Food Kitchen which is found to be unattended shall be considered a public safety hazard and may be ticketed and impounded.
- c. A Mobile Food Kitchen 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 Chapter 1 Section 1.19.001 of the City Health Department Rules and Regulations

### **Enforcement**

- a. *Fine for Violation.* Any permit holder operating a Mobile Food Kitchen in violation of any provision of this section or any rules and regulations promulgated by the Board of Health may be subject to a fine of one hundred (\$100.00) 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 Board of Health or Director of Public Health for failure to comply with the provisions of this section or any rules and regulations promulgated by the Board of Health.
  - 1. No permit shall be revoked, suspended, modified, or not renewed without a hearing before the Board of Health or the Director of Public Health prior to which hearing the Director of Public Health 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 Director of Public Health or his or her designee may suspend a permit for no more than three (3) days without a notice or hearing, if the Director of Public Health specifically notifies the permit holder in writing that there is a violation of public safety, health or order. In such a case, a hearing shall be held before the Board of Health or the Director of Public Health 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 of any rules and regulations promulgated by the Board of Health 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 Board of Health may be enforced jointly by the Board of Health, Director of Public Health or designee of the Director, Police Department and the Building Commissioner.

### **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.