

City of Fall River, *In City Council*

BE IT ORDAINED by the City Council of the City of Fall River, as follows:

By inserting in Chapter 14, which chapter relates to Businesses, a new Article XXI VENDING PUSH CARTS, and inserting under said article, the following new sections to read as follows:

Sec. 14-700 Food Vending Push Carts

The City Council finds that vending push carts offering pretzels, hotdogs, sausages, lemonade, and ice cream provide an atmosphere conducive for public enjoyment, leisure, and recreation. The City Council also finds that regulation of vending push carts is necessary to protect the public safety and welfare, as street-vending can pose particular hazards to pedestrians and impact vehicular traffic on public rights of way. The City Council further finds that food vending requires special regulation to protect the public health and limit the potential for unlicensed service of food to the public.

Sec. 14-701 Definitions

For purposes of this section, the following terms are defined as follows:

“City” means the City of Fall River.

“Department” means the Department of Engineering.

“Permitting authority” means the Clerk of the City of Fall River or her designee.

“Person” means an individual, corporation, partnership, or other business organization or entity.

“Push cart” means any wagon, cart, or similar wheeled container, but not a vehicle, from which food is offered for sale to the public.

Sec. 14-702 Permit requirement

No person shall sell, offer for sale, or provide any food or beverage from a push cart without first obtaining a food vending permit from the permitting authority. Nor shall any person employ, direct, or otherwise cause any other person to sell, offer for sale, or provide any food or beverage from a push cart without first obtaining a food vending permit from the permitting authority.

Sec. 14-703 Permit application

An applicant for a food vending push cart permit shall file with the permitting authority a written application containing:

- A. The name, address, and telephone number of the applicant;
- B. The name, address, and telephone number of the business, its owner or owners, and the mailing address of the business;
- C. The items offered for sale or provided to the public;
- D. The proposed location of the vending site, including two alternative locations, listed by order of preference;
- E. Evidence that the push cart passed all necessary inspections required by the Board of Health.

Each application shall be accompanied by a fifty dollar (\$50) permit fee.

Sec. 14-704 Approval process

- A. A permit application shall be forwarded to the Department of Engineering for review and approval of the proposed location requested by the applicant. The Department shall determine whether the width of the sidewalk at the proposed location or service route contains a minimum of seven (7) feet, including a minimum 36-inch path of travel around the push cart. Failure of the sidewalk to possess a minimum width of seven (7) feet, including a minimum 36-inch path of travel around the push cart will result in automatic rejection of the proposed location or service route by the Department. The Department may also consider in its approval or rejection of the proposed location whether the proposed location or service route poses a danger or nuisance to the public health, safety, or welfare, or impedes pedestrian or vehicular traffic.
- B. The Department may work with the applicant or permit holder to modify the location or service route at any time (i) before the issuance of a permit or (ii) after the issuance of a permit, if the grant of a permit or approval of the location or service route has led to the creation of a nuisance or otherwise endangers the public health, safety, welfare, or impedes pedestrian or vehicular traffic or (iii) by request of the permit holder.
- C. The permit application shall be forwarded to the food inspector who shall determine whether the items listed to be sold or provided to the public are safe for handling, selling, or providing, given the nature of the push cart and the limitations imposed on the push cart under this Article. The food inspector shall examine the push cart that is the subject of the application to determine its compliance with all laws and regulations set by the Commonwealth of Massachusetts and the City with regard to applicable health codes.
- D. The permit shall state the approved location or service route in which the push cart may be located and operated.

Sec. 14-705 Indemnification

Prior to the issuance of any food vending permit, the applicant shall execute an agreement holding the City, its employees, and agents harmless from any liability arising from the use of the permit.

Sec. 14-706 Insurance

The permit holder, at his or her sole cost and expense, shall obtain and maintain liability insurance for bodily injury and property damage in an amount not less than five hundred thousand dollars (\$500,000). The policy or policies shall contain an endorsement listing the City of Fall River as additional insured, and shall provide that the City be given thirty (30) days written notice prior to cancellation or material change. Proof of insurance shall be submitted to the permitting authority prior to issuance of any food vending permit.

Sec. 14-707 Permit term and renewal

Each permit issued pursuant to this Article shall be for a period of one year commencing on May 1 and ending April 30. Renewal of any permit shall be for an additional one year term and requires the submission of a new application along with a fifty dollar (\$50) renewal fee.

Sec. 14-708 Prohibition against transfer of permit

No person holding a food vending permit shall sell, lend, lease, assign, or transfer in any manner the food vending permit.

Sec. 14-709 Push cart regulations

- A. Push cart operations shall be limited to sidewalks that conform to the requirements of this Article.
- B. Each push cart shall have conspicuously affixed thereto the permit required by this Article.
- C. The maximum dimensions for any push cart shall not exceed six feet in length by four feet in width.

- D. The push cart may have affixed thereto or painted thereon a sign used in conjunction with the pushcart.
- E. No operator of a push cart shall park, stand, or move a push cart and conduct business where the permit holder has not been authorized to operate.
- F. No push cart operator or permit holder shall provide or allow any dining area, including, but not limited to, tables, chairs, booths, bar stools, benches, or standup counters.
- G. A garbage receptacle shall be provided for patrons.
- H. The push cart operator shall refrain from using bells, chimes, horns or other sounds, including the utterance of boisterous outcries to promote the sale of its food or beverage.
- I. The permit holder and the operator are responsible for ensuring that the area surrounding the push cart is kept clean and free of trash and debris associated with the push cart operation.
- J. The push cart shall not be unattended at any time. Nor shall the push cart be stored, parked or left at the permitted location over night.
- K. No propane tanks or open flames are permitted for operation on the push cart.

Sec. 14-710 Exceptions

For the purposes of this Article, a food vending permit holder shall not be considered a transient vendor under Article XVI. Further, a food vending permit holder shall not be subject to the time limitation described in Article VIII, Section 14-309.

Sec. 14-711 Revocation, hearing, and appeal

A violation of this article or violation of the State Sanitary Code 105 CMR 590 shall result in suspension of a food vending permit for up to five (5) days or revocation.

Prior to suspension or revocation of a permit, the permit holder shall be promptly afforded an opportunity for a hearing before the Board of Health.

Any person whose permit is suspended or revoked pursuant to this article may appeal in a non-criminal proceeding by making a written request to the Law Department of the City of Fall River within twenty-one (21) calendar days of the date of issuance of the suspension or revocation. Failure to timely appeal the administrative citation is deemed a waiver of the right to appeal.

Sec. 14-712 Enforcement

The Chief of Police or his designee as well as the Board of Health and its designee shall be vested with enforcement of this Article.

Sec. 14-713 Severability

The invalidity of any portion or portions of this article shall not invalidate any other portion, provision or section thereof.

In City Council, September 25, 2012
Passed to be ordained

Approved, October 3, 2012
William A. Flanagan, Mayor

A true copy. Attest:



City Clerk