

**South Portland City Council**  
***Position Paper of the City Manager***

***Subject:***

**ORDINANCE #17-16/17 – Amending Chapter 14, “Licenses, Permits and Business Regulations Generally,” regarding Food Trucks. Passed first reading 04/19/17. ROLL CALL VOTE. Passage requires majority vote.**

***Position:***

This item was discussed at the February 27, 2017 workshop. Section 14-104 of the City Code of Ordinances requires the licensure of food vending units, including stationary and mobile type units. Food vending units are generally not allowed on public property except during a special event. Additionally, stationary units are not allowed within 500 feet of a licensed food establishment, except that the Council may waive this provision after a public hearing with notice to the abutting food establishments. Included in your packet is a table describing the types of food vending units currently defined in ordinance, along with license requirements, fees, etc.

Staff has prepared and included in your packet a draft ordinance amendment that updates and clarifies definitions and policy related to food vending units operating within the City. Mobile Vending Units (food trucks) would be authorized to operate on public property and City streets on a regular basis during certain times and at certain locations as determined by a separate City Council Order. Setting the hours and locations by separate order will allow the Council to amend the hours and locations from time to time without having to revisit the ordinance itself.

Another substantive change contemplated in the ordinance amendment would allow food trucks to operate on certain private properties on a regular basis. If a business owner, for example, would like to allow one or more mobile food vendors to operate on their property for more than three days during any calendar year, then that activity would be treated as a

stationary vending unit and would require the property owner to first seek Site Plan approval from the Planning Board. This requirement recognizes the activity as a semi-permanent change in land use.

City staff will be available at the May 1 meeting to answer any questions from the Council.

***Requested Action:***

Public hearing and final action on Ordinance #17-16/17.



City Manager



City Council

Workshop Proposal Form

Date Submitted: \_\_1\_\_ / 9 / 17\_\_

Title: Amending Ch. 14 to allow food trucks year round

Sponsored by Councilor(s) Cohen

Nature of Proposal:  Information Exchange or  Possible Council Action

If Possible Action:  Resolve  Order  Ordinance

Summary/Description: We have no provision for food trucks to locate on publicly owned property throughout the city, other than during an organized event. I would like to allow food trucks at Bug Light, Wainwright and Thomas Knight Parks at least. I have attached ordinances from other communities that allow this type of food service establishment.

Is it time-sensitive?  No  Yes Deadline: \_\_3\_\_ / \_\_ / 17\_\_

Explain: I am hoping to get something on the books so that food trucks will be allowed in time for late spring.

Workshop Preparation Requested (i.e. staff presentation, guest speaker(s), Council discussion only, etc.):

I trust that staff can take the provided ordinances from other communities and craft something for South Portland. IE, number of trucks allowed at each location, hours allowed to be there, limiting to times when there is no other organized event or festival occurring where vendors pay to be part of the event.

Estimated Time Required: \_\_60\_\_ minutes

## Overview of Current Policy on Stationary and Mobile Vending Units

|  | Stationary Vending Units   | Vending Units<br>(incl. “Temporary” Vending Units<br>and Food Trucks)  | Mobile Vending Units<br>(Ice Cream Trucks)  |
|--|--|--|---|
| Chapter 27 – Zoning  | Defined in Ch. 27 as “Stationary Vending Unit” – “any vending unit, <u>other than a pushcart</u> , from which food products are sold, which is <u>licensed for one location on private property</u> and which conducts all of its sales from that one location.”                                   | Defined in Ch. 27 as “Vending Unit” – any “ <u>motorized conveyances</u> licensed by the state as motor vehicles, trailers, mobile stands, pushcarts or other units which are <u>capable of being driven, hauled, pushed or otherwise moved from place to place and from which food sales are made</u> . Farmers’ market stalls shall not be considered to be vending units. | Not defined in Ch. 27. This category includes mobile food trucks, such as ice cream trucks, that have a specific route and stops, but are not associated with a fixed location.   |
| Requires Planning Board Hearing and Site Plan approval?            | Yes  | Yes, <b>except not required for a “special event” on City property</b>   | Yes   |
| Chapter 14 – Licenses, Permits, and Business Regulations Generally | Units licensed as “Stationary” vendors (use Food License Application).<br><br>May be licensed for regular operation on Private property. <b>Stationary Vending Units are not allowed on public property unless on a temporary basis for a special event</b> (see <i>Temporary Vending Units</i> ). | Units licensed as “Pushcarts” or “Mobile” vendors (use Food License Application).<br><br>May be licensed on a temporary basis for specific events on City and Private property. Units require inspection by State, and shall provide a list of stops and operating locations, and written permission from landowner if stopping on private property.                         | Units licensed as “Mobile Ice Cream” vendors (use Food License Application).<br><br>Requires inspection by State, and shall provide a list of stops and operating locations, and written permission from landowner if stopping on private property. |

|   |  |  |  |
|---|--|--|--|
| Requires Setback from Licensed Food Establishments? | Yes, Sec. 14-104 prohibits units from operating within 500' of any licensed food establishment within the City, <b>except</b> Applicant may submit a request for waiver (requires Council Public Hearing with notice to abutting food establishments). | Yes, Sec. 14-104 prohibits units from operating within 500' of any licensed food establishment within the City, <b>except</b> Applicant may submit a request for waiver (requires Council Public Hearing with notice to abutting food establishments). | No, Mobile Ice Cream Trucks are exempt from the 500' rule.           |
| License Authority                                   | City Clerk issues license after Fire/Heath/Building/Police sign off. Council approval not required unless requesting waiver for 500'.  | City Clerk issues license after Fire/Heath/Building/Police sign off. Council approval not required unless requesting waiver for 500'.  | City Clerk issues license after Fire/Heath/Building/Police sign off. |
| License Fees  | \$120.00 for "Stationary vending unit"   | \$120 for "Mobile" vending unit<br>\$100 for pushcart<br><i>*may be licensed for multiple events as application indicates</i>  | \$120.00 for mobile ice cream truck                                  |



CITY OF SOUTH PORTLAND

PATRICIA A. SMITH  
Mayor

SCOTT T. MORELLI  
City Manager

EMILY F. SCULLY  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

District One  
CLAUDE V. Z. MORGAN

\_\_\_\_\_

District Two  
PATRICIA A. SMITH

\_\_\_\_\_

District Three  
EBEN C. ROSE

\_\_\_\_\_

District Four  
LINDA C. COHEN

\_\_\_\_\_

District Five  
BRAD FOX

\_\_\_\_\_

At Large  
MAXINE R. BEECHER

\_\_\_\_\_

At Large  
SUSAN J. HENDERSON

**IN CITY COUNCIL**

**ORDINANCE #17-16/17**

**THE COUNCIL** of the City of South Portland hereby ordains that Chapter 14, "Licenses, Permits and Business Regulations Generally," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended as follows (deletions are ~~struck through~~; additions are underlined):

**Chapter 14**

**LICENSES, PERMITS AND BUSINESS REGULATIONS GENERALLY**

**ARTICLE I. IN GENERAL**

• • •

**Sec. 14-2. Definitions.**

As used in this Chapter, the following words and phrases shall have the meanings ascribed to them in this section.

• • •

*Ice cream truck shall mean a motorized vehicle that travels from place to place on the streets for the purpose of selling prewrapped or prepackaged ice cream or frozen yogurt, ice cream or frozen yogurt products, or novelties.*

Mobile Vending Unit shall include pushcarts, motorized conveyances licensed by the state as motor vehicles, trailers, mobile stands, food trucks, or other units which are capable of being driven, hauled, pushed or otherwise moved from place to place and from which food sales are made. Farmers' market stalls shall not be considered to be mobile vending units.

Pushcart shall mean a non-motorized vending unit equipped for the storage and/or preparation of pre-packaged or unpackaged food intended for the use or for sale for human consumption. The dimensions of a pushcart shall not exceed six feet (6') in length or three feet four inches (3'4") in width.

*Special event* shall mean an outside or outdoor thematic entertainment, amusement, athletic or other event, that is advertised or promoted inside or outside the City, on private property or in the exclusionary use of City-owned or controlled property, and it is reasonably foreseeable to involve a large assemblage of vehicles and persons, impose traffic congestion, impact parking availability, and/or involve sanitation and security concerns. A special event has a specific start and stop date.

Stationary Vending Unit shall include any vending unit, other than a pushcart, from which food products are sold, which is licensed for one location on private property and which conducts all of its sales from that one location.

• • •

### **Sec. 14-3. License regulations; schedule.**

• • •

#### KEY TO SCHEDULE:

|              |   |
|--------------|---|
| CC           | Denotes license granted by City Council   |
| CLK          | Denotes license granted by City Clerk   |
| CMR          | Code of Maine Rules   |
| MRSA         | Denotes Maine Revised Statutes Annotated, as may be amended from time to time   |
| OY           | Denotes one year from date of issuance  |
| P            | Denotes Permit  |
| L            | Denotes License   |
| Police       | Denotes review of application by Police Department required prior to issuance or renewal, unless otherwise noted                                    |
| Fire         | Denotes review of application by Fire Department required prior to issuance or renewal, unless otherwise noted                                      |
| Health       | Denotes review of application by Health Officer required prior to issuance or renewal, unless otherwise noted                                       |
| CEO          | Denotes review of application by Code Enforcement Department required prior to issuance or renewal, unless otherwise noted                          |
| Finance      | Denotes review of application by Finance Director required prior to issuance or renewal, unless otherwise noted                                     |
| Corp         | Denotes review of application by Corporation Counsel required prior to issuance or renewal, unless otherwise noted                                  |
| Water        | Denotes review of application by Water Resource Protection Department required prior to issuance or renewal, unless otherwise noted                 |
| PW           | Denotes review of application by Public Works Department required prior to issuance or renewal, unless otherwise noted                              |
| <u>Parks</u> | <u>Denotes review of application by Parks, Recreation &amp; Waterfront Department required prior to issuance or renewal, unless otherwise noted</u> |

| Business or Occupation  | Reference  | P/L               | Granted by          | Exp                    | Additional Review by   |
|---|--|-------------------|---------------------|------------------------|--|
| • • •   |  |                   |                     |                        |  |
| Food Establishment (FE) without alcoholic beverage                                    | § 14-100 et seq.   |                   |                     |                        |  |
| FE, non alcoholic beverages (food preparation on site or no food preparation on site) | § 14-100 et seq.   | L                 | CLK                 | OY                     | Police/Fire/Health/CEO if new license or location                    |
| Catering establishment  | § 14-1041 et seq. and § 14-104                             | L                 | <a href="#">CLK</a> | <a href="#">OY</a>     | Police/Fire/Health/CEO if new license or location                    |
| <del>Mobile ice cream truck</del> vending unit  | § 14-104   | L                 | CLK                 | OY                     | Police/Fire/Health/CEO if new license or location                    |
| Mobile ( <del>motorized</del> ) vending unit  | § 14-104   | L                 | CLK                 | OY                     | Police/Fire/Health/ <del>Parks</del> /CEO if new license or location |
| <del>Push cart</del>  | <del>§ 14-104</del>  | <del>L</del>      | <del>CLK</del>      |                        | <del>Police/Fire/Health/CEO if new license or location</del>         |
| Stationary vending unit   | § 14-104   | L                 | CLK                 | OY                     | Police/Fire/Health/CEO if new license or location                    |
| Temporary FE (less than 2 weeks <del>and not a mobile vending unit</del> )            | § 14-1041 et seq.  | L                 | CLK                 | <a href="#">varies</a> | Police/Fire/Health/CEO if new license or location                    |
| • • •   |  |                   |                     |                        |  |
| Public Sidewalk, Use of for Outdoor Seating   | § 14-24  | L                 | CC                  | varies                 | see § 14-24(d)   |
| Secondhand dealer   | § 14-20 30-A MRSA § 3971                                   | L                 | CLK                 | 12/31                  | Police   |
| <a href="#">Special event</a>   | <a href="#">depends on components of the special event</a> | <a href="#">L</a> | <a href="#">CLK</a> | <a href="#">varies</a> | <a href="#">Police/Fire/Health/CEO/PW/Parks</a>                      |
| Taxicabs  |  |                   |                     |                        |  |
| Certificate of Public convenience   | § 14-58  | L                 | CC/CLK              |                        | Police   |
| Each taxicab  | § 14-59  | L                 | CLK                 | 6/30                   | --   |
| Driver (includes badge)   | § 14-60  | L                 | CLK                 | 6/30                   | Police   |

• • •

**Sec. 14-8. Standards for denial, suspension or revocation.**

• • •

(c) Insurance requirements.

The City Clerk or City Council, as appropriate, shall request proof of the insurance listed below before granting a license for the following:

- (1) circus – general liability insurance in the amount of at least \$1 million each occurrence and \$2 million general aggregate to cover loss, damage or injuries to persons or property that might result from the circus;



- (2) carnival - general liability insurance in the amount of at least \$1 million each occurrence and \$2 million general aggregate to cover loss, damage or injuries to persons or property that might result from the carnival;
- (3) Farmers' Market – as required by Section 14-105;
- (4) fireworks –as required by Section 14-34;
- (5) taxicab – as required by Section 14-59;
- (6) towing business/wrecker – as required by Chapter 15 of the Code of Ordinances
- (7) waste hauler – as required by Chapter 9 of the Code of Ordinances;
- (8) mobile ~~vending unit~~~~food vendor~~ - automotive liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage in the amount of at least \$1 million each accident; ~~or~~
- (9) ~~mobile~~-ice cream ~~truck~~~~vending unit~~ - automotive liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage in the amount of at least \$1 million each accident;
- (10) use of public sidewalk for outdoor seating - as required by Section 14-24; ~~or~~
- (11) a special event on City property - general liability coverage in an amount not less than ~~\$1 million~~~~400,000~~ combined single limit for personal injury and property damage, ~~or such other amount as may be required by the Maine Tort Claims Act (14 M.R.S.A. § 8001 et seq.) as amended from time to time, whichever amount shall be greater~~, and naming the City as an additional insured; ~~or:~~
- (12) a mobile vending unit on City property - automotive liability insurance as set forth herein plus general liability coverage in an amount not less than \$1 million combined single limit for personal injury and property damage, and naming the City as an additional insured.

• • •

**Sec. 14-104. ~~Mobile, temporary and non-permanent stationary~~ vending units, ice cream trucks and stationary vending units.**

The following provisions shall control mobile vending units, ice cream trucks and stationary vending units conducted within the City:

- (a) ~~Mobile, temporary and non-permanent stationary~~ vending units, ~~including push carts and mobile~~ ice cream ~~trucks~~~~vendors and stationary vending units~~, shall be licensed in accordance with the provisions of this Article except as set forth herein. Each such unit shall be licensed to sell and dispense only such items as are listed in the application and which the unit is properly equipped to dispense. In no event shall any license granted to any unit be valid to permit operation or sales within a five hundred foot (500') distance from any licensed food establishment within the City; provided, however, that this limitation shall not apply to ~~mobile~~-ice cream ~~trucks~~~~vending units~~, special events or mobile vending units licensed pursuant to subsection (e) below.

- (b) Sales of farm or food products as part of a farmers' market in a location specified in Section 14-105(a) shall not be considered mobile, ~~temporary or non-permanent stationary~~ vending units and shall not be regulated by this section.
- (c) A license for a ~~mobile, temporary and non-permanent~~ stationary vending unit may only be granted if the vending unit complies with zoning regulations and has received site plan approval from the Planning Board as provided in Chapter 27, "Zoning," Article VXIII, Site Plan Review; ~~provided, however, that site plan approval is not required for special events~~. Impacts to be considered include, but are not limited to: increase in traffic generation and circulation, parking area, utilization of City services, stormwater run-off, noise, odors or other annoying or dangerous emissions detectable at lot boundaries, or health concerns such as likelihood of attracting insects, vermin or other pests.
- (d) If a privately owned property is to serve as host to one or more mobile vending units on more than three (3) occasions in any calendar year, such use shall be considered a stationary vending unit for purposes of this article, and the property owner shall seek and obtain site plan approval for the site consistent with subsection (c) above prior to hosting a mobile vending unit for the fourth occasion in the calendar year.
- (e) Mobile vending units may be licensed to operate on City property and public streets only at such times and locations as established by City Council order. The City Clerk, in consultation with the City Manager, is hereby authorized to promulgate regulations not inconsistent with this article to govern the design, construction, location and operation of mobile vending units on City property or public streets. All mobile vending unit licenses issued pursuant to this article shall be subject to such applicable regulations as are adopted hereunder either prior to or after the date of the issuance thereof.
- (f) Notwithstanding other provisions of this section to the contrary, applicants for a mobile vending unit license other than a unit that may be licensed pursuant to subsection (e) above, temporary or non-permanent and applicants for a stationary vending unit licenses may apply to the City Council for a waiver of the provisions of this section prohibiting operation within five hundred feet (500') of any other licensed food service establishment. The City Council shall hold a public hearing on any such request. Not less than ten (10) days before the public hearing, notice shall be sent to all licensed food service establishments within five hundred feet (500'). The City Council may grant, deny, or grant with conditions any such license based upon a showing of hardship by the applicant and based upon a showing that the granting of a waiver ~~variance~~ would not be detrimental to the public health, safety or welfare, provided, however, that at least five (5) affirmative votes shall be required for a waiver.

**Sec. 14-105. Farmers' Markets and Associated Vendors.**

**(a) Farmers' Markets Generally.**

• • •

(vi) Mobile, ~~temporary and non-permanent stationary food~~ vending units, ~~including push carts~~ and ~~mobile~~ ice cream ~~trucks~~ vendors, are prohibited from participating in duly approved farmers' market locations.

Fiscal Note: Less than \$1,000

Dated: April 19, 2017