

TO: Town Meeting Members
FROM: Board of Selectmen
DATE: May 1, 2017

RE: **Mobile Food Vendors/Food Trucks**
-Information on Current Status and Regulations
-Report on Actions since Referral of 2016 ATM Article 25
-Supplemental Information Regarding Article 59 (Proposed Bylaw Amendment) and Article 64 (Citizens Petition)
-Recommendations and Proposed Next Steps

Current Status and Regulations

Mobile Food Vendors include food, canteen, and ice cream trucks and similar vehicles operating on the public ways. They are regulated under the Town's Hawkers and Peddlers By-Law (General By-Laws Section 3.1.11) and regulations of the Board of Selectmen.

The current bylaw precludes mobile vendors' operating within 1000 feet of schools and recreational areas during active use, and prohibits their remaining parked in any location for more than 10 minutes at a time.

The Selectmen's Regulations were adopted in 2013 in response to interest in improving opportunities for food trucks, clarifying requirements and standards, and adding to food service in parts of the Needham Crossing business district that have few or no restaurants.

The 2013 regulations provided for annual seasonal permitting (April 1 – November 30), a fee of \$1,000 (pro-ratable for a less than five-day business), and 7 a.m. – 8 p.m. operation in authorized locations. The regulation established a policy limiting food trucks to underserved areas, a minimum 200 foot distance from a food truck site to a fixed location restaurant, and established a schedule of authorized locations in Needham Crossing.

The regulation was revised in 2015 to add an option for a one week permit at a fee of \$25. The schedule of locations has been revised at intervals, most recently in April, 2017.

A copy of the current regulation is attached to this report.

2016 ATM Article 25

In 2016 a Citizens Petition was filed as Article 25 of the Annual Town Meeting addressing the subject of Food Trucks. The petition would have established the text of the regulation as a General By-Law, with the following changes:

- Removing the provision limiting food trucks to underserved areas.

- Reducing the required distance for a food truck from a restaurant from 200 to 15 feet.
- Removing the regulation's seasonal and hours of operation limitations.
- Replacing the siting process with a fixed list of locations. Those locations would have been the then current list plus specific sites adjacent to the Avery Common in Needham Heights and the Town Common in Needham Square.
- Removing certain exceptions and discretionary waivers that are in the policy.

After discussion, the subject matter of Article 25 was referred to the Board of Selectmen for a report to the 2017 Annual Town Meeting.

Actions since 2016 ATM

The Selectmen held a public hearing in October of 2016 on the subject of Food Trucks and possible changes to the Regulation. The hearing included input from boards and committees, businesses, potential vendors, community groups and interested citizens.

The discussions were wide ranging. Specific areas of focus at (and since) the hearing included interest in mobile food service at sports and other public events at the parks, the need to reconcile the provisions of the bylaw with the regulation and current practice, and the question of whether to authorize food trucks in areas (such as the downtown and heights business districts) where fixed location food service is already available.

The Selectmen have consulted with the Town's Council of Economic Advisors, the Newton Needham Chamber of Commerce, and Needham Business Association, and have continued to receive input and comment from individual businesses and interested citizens.

The Selectmen have met with the Park and Recreation Commission, School Department, and Memorial Park Trustees regarding mobile food service at sports and other public events at the parks. Options and discussion drafts include potential times and events, locations, and establishment of criteria satisfactory to the jurisdictional boards.

The Selectmen have proposed as Article 59 of this Town Meeting's Warrant amendment of the Hawkers and Peddlers By-Law to allow the Selectmen to permit exceptions to that bylaw by regulation. This will allow the contemplated permitting at recreational events as well as reconciliation of current practices and regulation to the bylaw.

Food trucks are effectively not able to operate on private property in the downtown business districts as a result of applicable provisions of the Zoning By-Laws. The Selectmen have asked the Planning Board to consider whether those zoning requirements should be revised in view of public interest in this subject.

The Selectmen continue to be of the view that food truck locations should not be established on the public ways in the downtown areas. The downtown business district has a sufficient number of restaurants, and available locations for more, but a shortage

of available parking (requiring some restaurants to limit seating) during the times proposed for food trucks.

In April, the Selectmen revised the regulation's schedule of Needham Crossing locations to take into account ongoing construction in that area.

The Selectmen's goal is to complete revisions of the regulations in the coming weeks, including taking into account decisions by Town Meeting.

Article 59 (Proposed Bylaw Amendment)

Article 59 proposes to amend the Hawkers and Peddlers By-Law (General By-Law 3.1.11) to allow the Selectmen to allow exceptions to that bylaw by regulation.

A Hawker or Peddler is defined by State Law as any person who goes from place to place within the Town selling goods or merchandise, including food, whether on foot or in a vehicle, for profit. The terms hawker and peddler are interchangeable. By regulation, a mobile food vendor is required to have a hawkers and peddlers license.

Because the current bylaw prohibits hawkers and peddlers within one thousand feet of schools and recreation areas in active use, and prohibits their parking in any location for more than 10 minutes, there are conflicts with current practices, and with some of the proposed additional options.

Warrant Article 59 would rewrite Section 3.1.11, with the key change being the highlighted text shown below:

"3.1.11 Licensed Hawkers and Peddlers. Except as otherwise specified by regulations issued by the Board of Selectmen:

3.1.11.1 No person, under Massachusetts General Law Chapter 101, Section 22, shall sell or offer to sell items specified therein within 1,000 feet of any recreational area in organized use, or within 1,000 feet of any school (public or private) during the hours that school is in session, nor until one hour after the closing of said school or schools.

3.1.11.2 Such hawkers or peddlers shall not remain parked at any one location for a period of time exceeding ten (10) minutes, nor shall a bell, horn or other device to attract customers be used after the hour of 8:00 P.M. of any day."

Enactment of Article 59 is required for implementation of the currently contemplated revisions. The Board of Selectmen requests approval of Article 59.

Article 64 Citizens Petition regarding Food Trucks

This Citizens Petition, similar to the petition filed in 2016, would change the text of the current regulation and make the revised text a General By-Law. The text differences from the current Regulation would:

- Remove the provision limiting food trucks to underserved areas.
- Reduce the required distance for a food truck from a restaurant from 200 to 50 feet.
- Remove the regulation's seasonal and hours of operation limitations.
- Replace the discretionary siting process with a schedule of locations. The locations would be those on the regulation's calendar 2016 list, plus two metered spaces on Great Plain Avenue adjacent to Greene's Field.
- Remove certain exceptions and discretionary waivers that are in the policy.
- Replace current \$1000 annual seasonal, pro-ratable, fee with a fee \$250 per year.

(Errata: The Selectmen's Article 65 Information in the 2017 Warrant also refers to the petition as introducing the \$25 one week permit, but that provision is part of the current regulation, and would be retained under the petition).

The view of the Selectmen with regard to two of the principal issues presented by the petition:

- A. The Town can better and more flexibly manage this evolving subject by means of regulations than by bylaw.
- B. For vendors seeking to use the town right of way, the Board continues to believe that permits should only be issued in areas under-served by fixed location restaurants, and does not support expansion of permits to include Needham Center and Needham Heights at this time.

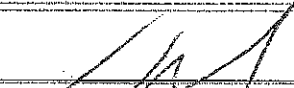
In view of continuing work on incorporating input into further revision of the current regulation, the Selectmen request referral of the subject matter of Article 65 to the Board of Selectmen.

Recommendations and Proposed next steps

The Board of Selectmen requests approval of Article 59, and that the subject matter of Article 65 be referred to the Board.

The Board's intent has been to complete the current round of revisions to the regulations in the coming weeks. Following Town Meeting, the Board expects to continue work on this subject, incorporating bylaw changes and guidance of Town Meeting into the process.

Town of Needham Board of Selectmen

Policy Number:	BOS-LIC-013
Policy:	Regulation of Food Trucks
Date Approved:	October 8, 2013
Date Revised:	Revised June 9, 2015
Approved:	 Chairman, Board of Selectman

Section 1: Definitions

Food Truck - A readily movable trailer or motorized wheeled vehicle, currently registered with the Massachusetts Division of Motor Vehicles, designed and equipped to cook, prepare, and serve food.

Section 2: Authorized Locations and Restrictions for Food Truck Sales in or on Designated Public Right of Way Areas

- 2.1 Food trucks may be located in public right of way areas which are underserved by “brick and mortar” restaurant facilities (hereafter “traditional restaurant facilities”) during the period April 1 to November 30 on Mondays through Fridays from 7:00 a.m. to 8:00 p.m. A food truck may not be located in or on any portion of a designated public right of way when and where such location would prevent the safe use of the public right of way by motor vehicles, pedestrians, and/or customers. The vending location shall not otherwise interfere with the movement of motor vehicles in the area.
- 2.2 Commercial areas listed in Appendix 1 are those identified as presently underserved by traditional restaurant facilities. The Board of Selectmen, in consultation with the Planning Board, shall have authority under this Policy to review and modify the areas deemed underserved by traditional restaurant facilities. The current locations identified for use by food trucks within the public right of way are listed in Appendix 2. The Board of Selectman may authorize additional locations within the underserved areas. The Board of Selectmen reserves the right to modify any of the areas listed in Appendix 1 or locations listed in Appendix 2 as needed.
- 2.3 Food trucks shall comply with applicable provisions of the Town of Needham General By-laws with respect to locations near schools and recreation facilities.
- 2.4 Food trucks must be positioned at least 200 feet from the customer entrance of a traditional restaurant, unless the food truck vendor provides documentation that the restaurant owner supports a closer proximity.

- 2.5 Food trucks shall be positioned on designated right of way areas and shall not block drive entrances, exits, access to loading and/or service areas, or emergency access and fire lanes. Food trucks must also be positioned at least 20 feet away from fire hydrants, any fire department connection, driveway entrances, alleys, and handicapped parking spaces.
- 2.6 Each year, the Board of Selectmen shall establish an open period from December 1 to January 30 of the following year for applications to operate a food truck in public right of way areas. Should the number of applicants exceed available locations within the public right of way, then the Town Manager will create an equitable distribution of available locations among qualified applicants. If locations are available after the close of the open period and after issuance to those applicants who applied during the open period, then applicants may apply after the open period but any permits issued will be on a first come first served basis.
- 2.7 Food Truck vendors shall comply with all local, county and state tax regulations, including but not limited to retail sales applicable to food and beverages.

Section 3: Public Safety and Nuisance Prevention

- 3.1 Food truck vendors must obtain requisite licenses or permits for operation from the Needham Health Department, Police Department, Fire Department, and Board of Selectmen.
- 3.2 Temporary connections to potable water are prohibited. All plumbing and electrical connections shall be accordance with the State Building Code.
- 3.3 Grease must be contained and disposed of in accordance with State Sanitary Code.
- 3.4 Grey water must be contained and disposed of in accordance with State Sanitary Code.
- 3.5 Food trucks must have the following fire extinguisher on board during hours of operation: one 15 lb. multipurpose subject to the determination of the Fire Chief or his designee.
- 3.6 Food trucks may not operate as a drive-in/drive-up/drive-through operation. All service must be walk-up by customers.
- 3.7 Trash and recycling receptacles shall be provided for customers and trash and recyclables shall be removed from the site daily.
- 3.8 If a food truck is proposed to operate after dark, the vendor must provide appropriate lighting.
- 3.9 No signage shall be allowed other than signs permanently attached to the motor vehicle and a portable menu sign no more than 9 square feet in display area on the ground in the customer waiting area.

- 3.10 No food truck shall make or cause to be made any unreasonable or excessive noise or odor.
- 3.11 No food truck shall set up tables, chairs, umbrellas or similar facilities (except standing counters and tables without chairs or stools).

Section 4: Permitting

- 4.1 A food truck will be licensed by the Town's Health Department and Fire Department before issuance or renewal of the Food Truck Permit from the Board of Selectmen, which must be prominently displayed on the truck.
- 4.2 A fee in the amount of \$1000.00 for a five day a week seasonal Permit shall be paid upon issuance of the Food Truck Permit. Such fee shall be subject to prorating based on the number of days per week licensed.
- 4.3 Food truck vendors must obtain requisite insurance, bonding and workers compensation as required from time to time by the Board of Selectmen.
- 4.4 Food Truck vendors must obtain a Massachusetts Hawker and Peddler License (issued through the Police Department).
- 4.5 The Board of Selectmen may waive any conditions or requirements of this Policy if the Board determines such to be in the best interests of the Community.
- 4.6 Violation of any of the provisions of this Section may result in revocation of the permits and licenses issued to the vendor to operate in Needham.
- 4.7 A fee in the amount of \$25 for a permit valid for up to one week ("Limited Food Truck Permit") shall be paid upon the issuance of the Limited Food Truck Permit. Such permit shall be issued only to the extent spaces are available; that is, not otherwise occupied by seasonal Food Truck Permit holders. Seasonal permit requests shall have precedence over limited ones. All regulations related to seasonal food trucks apply.

Section 5: Exceptions (Food Truck Permits not Required)

With the exception of food safety and hawker and peddler requirements, if applicable, this policy shall not apply to canteen or coffee trucks that move from place to place and are stationary for no more than thirty minutes at a time or ice cream trucks which move from place to place and are stationary for no more than ten minutes. Further, this policy is not applicable to special one-day events on public property authorized by the Town.

APPENDIX 1

Underserved Commercial Areas

1. New England Business Center
2. Mixed Use-128
3. Industrial 1

APPENDIX 2
APPROVED BY Board of Selectmen 4.12.2017

Locations Presently Approved for Food Trucks

The current locations identified for use by food trucks within the public right of ways areas are:

- First Avenue – along the side of the road located in the general area between A and B Streets*.
- First Avenue – along the side of the road located in the general area between #114 and #200 First Avenue*
- Fourth Avenue – along the side of the road located in the general vicinity of #117-#119 Fourth Avenue
- Cabot Street – circular area at the top of the hill

*Note that these locations are presently undergoing construction and may become designated as unavailable, depending on construction timelines.

Exact locations must be reviewed and approved by the Needham Police Department.

Locations are subject to change with the approval of the Board of Selectmen and the Needham Police Department.

