

**BOARD OF SELECTMEN
TOWN OF BROOKLINE
MOBILE FOOD VENDOR REGULATIONS
(Voted: January 24, 2012; Amended: June 26, 2013, April 8, 2014)**

1. Definitions

- a. “Board” means the Board of Selectmen for the Town of Brookline.
- b. “Food vendor license” refers to the license to sell food issued under the authority of Article 8.10 of the Town of Brookline’s By-Laws.
- c. “Ice cream” means any prepared or packaged frozen dairy or frozen water-based food product.
- d. “Ice cream truck vendor” means a person who owns, sells, displays, or offers to sell “ice cream” from a motor vehicle, whether as a sole menu item or in combination with other food or beverage items. “Ice cream truck vendor” also means any person who drives or operates the motor vehicle.
- e. “Ice cream truck vendor permit” refers to the permit to sell ice cream from a motor vehicle issued to ice cream truck vendors under the authority of Mass. Gen. Laws ch. 270, § 25, and 520 CMR 15.00, in the form approved by the Massachusetts Department of Public Safety.
- f. “Mobile food vendor” means any person or business offering for sale any prepared or packaged food or beverages from a truck or cart, including “ice cream” and non-“ice cream” food and beverage products.
- g. “Mobile food vendor license” refers to a food vendor license issued to a business operating from a truck or cart.
- h. “Mobile food vendor licensee” means the holder of a mobile food vendor license.

2. Licenses and Permits; Applications

All mobile food vendors wishing to conduct business within the Town must apply for and obtain from the Board a food vendor license.

In addition, “ice cream truck vendors” who intend to operate within the Town must apply for and obtain from the Board an ice cream truck vendor permit, unless the ice cream truck vendor provides proof that s/he has a current ice cream truck vendor permit issued by the municipality in which the vendor lives. Permits shall be numbered in order as granted. Ice cream truck vendor permits are specific to the vendor and are non-

transferable (including between persons driving or doing business from the same motor vehicle).

Mobile food vendors must also obtain any required permit(s) from the Brookline Health Department and a Hawker's and Peddler's License from the Commonwealth of Massachusetts, if applicable.

A food vendor license is not required with respect to the following mobile food vendors: a) vendors associated with the Brookline Farmer's Market (however, such vendors must register with the Brookline Health Department), and b) vendors selling food or beverages on a one-day basis or for special events (for which separate approval may be required), including charitable and non-profit fundraisers. However, such mobile food vendors selling ice cream must obtain an ice cream truck vending permit, as set forth above.

The Board shall determine the term of the license or permit, except that ice cream truck vendor permits shall expire on January 1st and will expire annually thereafter.

License and permit-related fees shall be in an amount established by the Board pursuant to M.G.L. c. 40, s. 22F.

Mobile food vendors shall submit the following as part of their application for a mobile food vendor license:

- a. a description of the proposed operation, including:
 - i. a description of the business and a menu,
 - ii. proposed hours of operation and a detailed schedule of times and locations where the vendor will be stationary and serving food,
 - iii. in the case of vendors who will not conduct business at a set location, the proposed hours of operation and route,
 - iv. a plan for the control and elimination of litter that complies with Article 8.7 of the Town of Brookline By-Laws and the regulations of the Town of Brookline's Health Department,
 - v. a description of any cooking equipment including gas tank size, if applicable,
 - vi. a description of any cooking, refrigeration, seating, or other type of equipment, apparatus, or furniture the vendor wishes to place on areas outside of the truck or cart, and
 - vii. a description of the restroom facilities with flushable toilets and access to hand-washing facilities that will be available for the use of employees;
- b. proof that:
 - i. the truck or cart will be serviced by a mobile food commissary, or another method approved by the Brookline Health Department, and
 - ii. unless operating on private property, the existence of a general liability policy in effect during all days and times for which a mobile food license is sought, that names the Town as an additional insured and is in a form and for an amount approved by the Town;

- c. unless operating on private property, an agreement absolving the Town, its officials, officers, and employees from all liability in connection with the proposed use of Town property, agreeing to indemnify the Town for any damage to the Town's personal and real property resulting from the use, and agreeing to indemnify the Town for any expenses the Town incurs in restoring the Town property to its condition prior to the use (in excess of any routine cleaning and maintenance service the Town would ordinarily have performed irrespective of the use); and
- d. in the case of ice cream truck vendors, a completed Massachusetts Department of Public Safety-approved ice cream truck permit application form, a copy of the applicant's fingerprints, and (2) current 1 ½" x 2" color photographs of the applicant.

Applicants are subject to a background check to determine eligibility. In the case of applicants for an ice cream truck vending permit, the background investigation shall include performing a state and national criminal history records check as authorized by M.G.L. c. 6, § 172B ½ and Art. 8.30 of the Town By-Laws. Prior to conducting any criminal background check, the Town shall verify the identity of the subject against at least one of the following forms of government-issued identification: **a)** a state-issued driver's license; **b)** a state-issued identification card with a photograph; **c)** a passport; or **d)** a military identification. All criminal background checks and the handling of the results shall be in conformity with applicable law, by-law, and Town policy, including but not limited to Art. 8.30 of the Town By-Laws and the Town's CORI Policy: Licensing.

In considering a mobile food vendor's application for a mobile food vendor license, the Board shall consider the public good and the general welfare and convenience of the community, and shall take into account factors such as the sort of operation proposed (including the proposed menu, days and hours of operation, and location), matters pertaining to cleanliness and proper sanitation, the qualifications of the applicant, whether the truck or cart is equipped with the necessary implements and facilities for cooking, preparing and furnishing the proposed menu to the public, any impact on the community with respect to matters such as noise, traffic, congestion, odors, sanitary and waste disposal facilities, parking, dust and fumes, the impact on the character of the neighborhood and the Town, and whether any articulable harm would follow from the granting of the license. Additionally, the Board shall consider whether a public benefit would flow from the proposed location and use, and the competitive or other impact on existing restaurants.

Prior to granting a mobile food vendor license, the Board shall seek advisory reports from the Police Department, Fire Department, Treasurer/Collector, Health Department, Building Department, Planning Department, and the Parks and Transportation Divisions, as appropriate, and shall hold a public hearing on the application.

In no event shall an ice cream truck vendor permit be issued to any person who is a sex offender as defined by M.G.L. c. 6, § 178C.

No food vendor license or ice cream truck vendor permit shall be granted to operate within the public way within one thousand (1,000) feet of any Brookline elementary school between the hours of 8:00 a.m. and 3:00 p.m. or Brookline High School between the hours of 8:00 a.m. and 2:30 a.m. on days when the public schools are in session, or within one thousand (1,000) feet of the Brookline Municipal Swimming Pool between the hours of 8:00 a.m. and 2:30 p.m. on days when the public schools are in session. A mobile food vendor that meets the criteria set forth in the Town's mobile food vendor program may be licensed to operate at the High School in a designated location between the hours of 2:30 p.m. and 7:00 p.m. when the public schools are in session and between the hours of 1:00 p.m. and 7:00 p.m. on weekends subject to the approval of the Headmaster of Brookline High School, the Director of Public Health, the Director of Transportation and Engineering and the Director of Economic Development.

The Board's issuance of a mobile food vendor license does not grant to or entitle the licensee the exclusive use of any service route or location, in whole or in part, other than the time and place specified in the license or permit for the term of the license or permit.

In no event shall any mobile food vendor conduct business within the Town except as permitted by the food vendor license or ice cream truck vendor permit.

3. Renewals

Applications for renewal of mobile food vendor licenses shall be accompanied by a description of any general change in the mobile food vendor's operations, such as a change in hours or menu.

Applications for renewal of ice cream truck vendor permits shall be made on a Massachusetts Department of Public Safety-approved ice cream truck vendor renewal application form and be accompanied by a copy of the applicant's fingerprints and two (2) current photographs of the applicant, as detailed in Section 2 above with respect to new applications. The Town shall ensure that the applicant for an ice cream truck vendor permit is linked to the original ice cream truck vendor permit number.

The Board reserves the right to add, remove, and reapportion available locations among mobile food vendors upon renewal of a license.

4. Compliance with Applicable Laws, Regulations, and By-Laws/ Requests for Information and Inspections

All mobile food vendor licensees must comply with all applicable federal, state, and local laws, regulations, and by-laws, any conditions on a Town license or permit, and any applicable Town policies, procedures, standards and guidelines. All mobile food vendor licenses are issued subject to the licensee's compliance with this Section and these regulations. Licensees shall supply to the Board or its agent such information as the Board or its agent may require for purposes of the proper enforcement of these regulations. The Board or its agent, including the Police and other inspectional departments, may at any time inspect the premises to which the license applies to

determine whether the licensee is in compliance with this Section.

5. Taxes and Charges

All taxes and charges owed to the Town must be paid on a current basis. The Town may place a lien on the property of any person who has an outstanding balance due to the town from any fee, charge, or tax, which balance is at least six months due.

6. Use of Town Property

All mobile food vendors wishing to sell food from public property (including any public street, sidewalk, or park) must obtain permission to do so from the Town board, commission, agency, or department having jurisdiction over the public property.

7. Transfers

No mobile food vendor licensee may transfer a mobile food vendor license except upon application to and approval by the Board of the transfer.

No mobile food vendor licenses shall sell, lend, lease or in any manner transfer a license for value. Notwithstanding the foregoing sentence, a mobile food vendor licensee may, with approval by the Board, transfer a license as part of the sale of a majority of the stock in a corporation holding such license, as part of the sale of a majority of the membership interests of a limited liability company holding such license, or as part of the sale of a business or substantially all of its assets; provided that there shall be no allocated or actual value for the transfer of the license. Any such transfer shall be subject to the terms and conditions of the original license, unless otherwise stipulated by the Board.

8. Inactivity

No mobile food vendor licensee shall cease operations during the period covered by the license without notifying the Board in writing and obtaining its permission.

9. Rules of Operation

a. Licensees shall not cause unnecessary operation of the engine of a motor vehicle while the vehicle is stopped for a foreseeable period of time in excess of five minutes. This section shall not apply to vehicles engaged in an operation for which the engine power is necessary for an associate power need other than movement and substitute alternate power means cannot be made available provided that such operation does not cause or contribute to a condition of air pollution.

b. Licensees must conspicuously display their license on the windshield of the truck or on the cart from which food is sold.

c. No licensee may provide or allow any dining area, including but not limited to tables, chairs, booths, bar stools, benches, and standup counters, unless a

proposal for such seating arrangements is submitted to the Board and the Board approves it. In the event that a mobile food vendor proposes to use Town property for seating, it must obtain all necessary approvals pursuant to Section 5 above. In addition, prior to granting permission to provide a dining area, the Board shall seek the advisory reports of the Planning Department, the Building Department, the Police Department, and the Department of Public Works.

d. No licensee may place any cooking, refrigeration, or other type of equipment or apparatus in areas outside of the truck or cart unless a proposal to do is submitted to the Board and the Board approves it.

e. Customers shall be provided with single service articles, such as plastic forks and paper plates.

f. Licensees shall offer a waste container for public use that the operator shall empty at his own expense. Licensees shall operate in a clean and sanitary manner and control waste and litter in a manner that complies with Article 8.8 of the Town of Brookline By-Laws and the regulations of the Brookline Health Department.

g. Licensees must service their truck or cart in a manner approved by the Brookline Health Department with respect to food, water and supplies for all cleaning and servicing operations (including the emptying and cleaning of waste containers). Licensees operating for more than four hours at a time must keep an accurate log indicating that the truck or cart is serviced in the manner approved by the Brookline Health Department.

h. No licensee shall make or cause to be made any unreasonable or excessive noise. Licensees shall otherwise comply with the Town's Noise By-Law, Article 8.15 of the Town of Brookline's By-Laws.

i. Hawkers and peddlers selling ice cream from trucks must equip such trucks with a flashing amber dome light and front and rear warning lights, which the vendor shall flash alternately and which shall be kept flashing when such vehicle is stopped for the purpose of selling ice cream.

j. No truck or cart shall be stationed on the street overnight, or left unattended and unsecured at any time food is kept in it.

k. Temporary power needed for vehicles (gas-powered or other powered devices) must be approved by the Building, Fire and Health Departments.

l. All operators of a motor vehicle from which a licensee offers food or beverages for sale within the Town shall have a valid driver's license to drive such vehicle.

10. Modifications / Suspensions / Revocations / Non-Renewals / Fines

The Board may modify a mobile food vendor license, including an approved location, (i) at any time before the issuance of a mobile food vendor license, (ii) if after the issuance of such license, for cause, after reasonable notice to the licensee of the grounds for the proposed modification and the time and place of the hearing regarding such proposed modification, or (iii) by request of the licensee, subject to Board approval.

With respect to trucks or carts on public property, the Town reserves the right to temporarily move a truck or cart to a nearby location if there is a need by the Town to use the approved location for emergency purposes, snow removal, construction, or other public benefit.

The Board may suspend, revoke, or decline to renew a mobile food vendor license for cause, after reasonable notice to the licensee of the grounds for the proposed action and the time and place of the hearing regarding such proposed action.

In addition, any mobile food vendor who refuses, neglects or fails to comply with any of these regulations shall be subject to a fine imposed pursuant to and in conformity with Article X of the Town By-Laws and/or such other laws, regulations, by-laws or codes applicable to the particular violation.

Each day that a mobile food truck vendor operates in violation of the regulations requiring a) a license/permit as provided in Section 2, and b) the display of the license/permit in the windshield of the truck (Section 9(b)) may be considered a separate violation. Hearings regarding such alleged violations by ice cream truck vendors shall be conducted in conformity with 520 C.M.R. Part 15.06.