

CHAPTER 343

Mobile Food Vending

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343.01 Definitions

The following words and phrases shall have the meanings set forth unless the context of their use clearly indicates otherwise:

APPLICANT

Any person by or for whom an application is made under this Chapter.

CITY

The City of Niagara Falls, New York

MOBILE FOOD VEHICLE

A self-contained mobile food unit in which ready-to-eat food is prepared, cooked, wrapped, packaged, processed or portioned for service, sale, or distribution.

MOBILE FOOD VENDOR

The owner or owner's agent of a mobile food vehicle.

PERSON

A natural person, corporation, partnership, association, joint venture, society or other organization or association of any kind, whether acting as principal, agent, employer or employee.

PROPERTY

Any goods, wares, merchandise or other article or thing of every kind or nature except newspapers.

VENDING

The selling or offering to sell food and/or beverages from a mobile food vehicle. This also shall include the selling or offering to sell goods and/or merchandise incidental to the offered food and/or beverages or bearing the name, slogan, logo or other identifying characteristics of the mobile food vehicle.

343.02 Permit Required

No person shall engage in mobile food vehicle vending without first obtaining a permit or registering or both as required by this Chapter, which permit shall at all times be displayed in a conspicuous location on one's person and on the outside of the vehicle.

343.03 Permit Application and Issuance Requirements

A. An application for a yearly permit or a renewal permit under this Chapter shall contain the following:

- (1) The name, home address and local address, if any, of the applicant and any other individual who will be performing any on-site work as part of the mobile food vending operation for applicant (hereinafter "employee").
- (2) A valid driver's license or non-driver identification card issued by the State of New York.
- (3) The name and address of the person, if any, by whom the applicant is employed and for whom or through whom orders are to be solicited, cleared, filled or delivered.
- (4) A description of the business or activity in which the applicant intends to engage and of the nature of any property or services involved.
- (5) A list of crimes for which the applicant and all employees have been arrested or convicted, including the dates and places. Additionally, a local records criminal background check must be obtained from the Niagara Falls Police Department (at applicant's cost) and submitted herewith.
- (6) A statement as to the period of time during which the applicant intends to engage in the business or activity regulated under this Chapter.
- (7) Proof that the applicant, or his or her employer or principal, is registered for sales tax purposes, if the business or activity to be conducted is subject to sales or use tax. A copy of the applicable sales tax certificate is required. Additionally, proof of compliance with federal, state, county and local requirements, including any required permits from the Department of Health, shall be submitted.
- (8) A description of any motor vehicle that will be used as a mobile food vehicle, include the name of manufacturer, year, type of vehicle, vehicle identification number, registration plate number, title holder and name of the person other than the title holder to whom the vehicle is registered, if any.

(9) The location(s) where a mobile food vending operation is to be conducted, if known.

(10) Any additional information deemed necessary by the City Clerk, the Niagara Falls Fire Department and/or Niagara Falls Police Department.

(11) General liability and product liability insurance coverage of \$1,000,000 per occurrence and \$2,000,000 aggregate naming the City of Niagara Falls as additionally insured.

(12) The application shall be accompanied by the payment of any and all fees required pursuant to this Chapter.

B. The application shall be signed by the applicant and sworn to before a notary public or other officer authorized to administer oaths.

C. If mobile food vending is to be conducted on private property, the written consent of the property owner, if other than the applicant, shall be filed with the application or shall be prominently displayed on the mobile food vending vehicle.

D. The City Clerk shall forward a copy of the application to the Niagara Falls Police Department. The Police Department shall, to the extent possible, determine whether or not the applicant and/or employees have accurately reported convictions and is otherwise a person of good moral character and reputation. The Police Department shall then report the results of their investigation, together with a recommendation whether to approve or disapprove the application, to the City Clerk.

E. After receipt of report from the Police Department, the City Clerk shall issue the permit requested unless the applicant and/or employee is a registered sex offender, or has been convicted of a felony at any time or a misdemeanor within five (5) years prior to the application, and has not been granted relief from civil disabilities, or otherwise is found not to be a person of good moral character and reputation.

F. Event Permit Applications shall be made in the same manner set forth for yearly annual permits herein and shall additionally state the event for which the application is sought, the location of the event, and the anticipated dates and hours of operation. The application requirements set forth in Section 343.03(A) are waived if the applicant provides proof of a valid annual mobile food vendor permit issued by a municipality located in either Niagara County, New York or Erie County, New York and pays the applicable fee set forth in Section 343.04(A).

343.04 Fees and Durations of Permits

A. The following fees shall be paid to the City Clerk with an application for a permit:

<u>Type of Permit</u>	<u>Fee</u>
Initial Applications (yearly, per vehicle)	\$ 200.00*
Renewal Applications (yearly, per vehicle)	\$ 200.00*
Event Applications (per vehicle)	\$ 50.00*
Each Employee Permit (yearly)	\$ 35.00
Each Employee Permit (event)	\$ 15.00

* Includes the issuance of a Permit for the Applicant only

B. Yearly permits issued pursuant to this Chapter shall automatically expire one (1) year after the date of issuance. A yearly permit that is renewed prior to its' date of expiration or within thirty (30) days after its' date of expiration may be renewed by completion of a renewal application and payment of the renewal application permit fee. Event permits shall expire at the conclusion of the event for which they have been issued, and in any event no later than one week from the start of the event for which they have been issued. Permits issued under this Chapter shall not be transferable.

C. A permit issued pursuant to this Chapter may be revoked if, following its issuance, the Police Department determines that the applicant was convicted for any crime not reported in the application or is otherwise not a person of good moral character and reputation. A permit may also be revoked for any violation of this Chapter committed after its issuance.

343.05 Hours of Operation Permitted

Mobile food vehicle vending shall not be conducted before 9:00 a.m. or after 9:00 p.m. on a residential property or in a right-of-way adjacent to a residential property and shall not be conducted before 9:00 a.m. or after 3:00 a.m. on a non-residential property or in a right of way adjacent to a non-residential property.

343.06 Prohibitions

A. It shall be unlawful to conduct business from a mobile food vehicle within a public right-of-way or on private property within the City without having first obtained a valid mobile food vendor permit for each mobile food vehicle, and having said permit displayed prominently on each such vehicle.

B. It shall be unlawful for a mobile food vendor to conduct business in a location within the public right of way other than those set forth in Section 343.07 herein.

C. Within non-residential zoning districts, it shall be unlawful for a mobile food vendor to conduct business at a single location within a public right-of-way for a duration exceeding five (5) hours. Within residential zoning districts, it shall be unlawful for a mobile food vendor to conduct business within a public right-of-way except for mobile food vehicles

that operate for less than twenty (20) minutes at a single location or that operate within an area where a block party is being conducted.

D. At all times, mobile food vendors and vehicles shall abide by the New York State Transportation Law and all applicable federal, state and local Parking, Vehicle and Traffic Laws, Ordinances, Rules and Regulations.

E. All signage associated with a mobile food vendor must be permanently affixed to the mobile food vehicle. No accessory signage shall be placed outside or around the mobile food vehicle. Applicant and all employees must wear and prominently display their permits at all times.

F. All mobile food vendors must provide trash receptacles of sufficient capacity to contain all trash and waste generated in association with the business of the mobile food vendor. All waste and trash shall be placed in the trash receptacles. All trash, waste, litter and debris shall be removed from the site of the vending operation at the end of each such operation. Failure to abide by this section shall be considered a violation of this Chapter.

G. It shall be unlawful to discharge liquid waste, fats, oils or grease on the land. Such discharges shall be held in appropriate containers and then disposed in a legally permissible manner.

H. Mobile food vendors shall not conduct operation from any site that contains a gasoline service.

I. Each mobile food vehicle shall be inspected annually by the appropriate City personnel for fire-safety code compliance and compliance with all state and local vehicle and traffic laws and ordinances.

J. All required permits shall be posted conspicuously on the mobile food vehicle.

K. Each mobile food vehicle shall be registered as a commercial vehicle with the New York State Department of Motor Vehicles, must be properly inspected and carry appropriate vehicle insurance as required by New York State law.

L. When parked on a public or private right-of-way, products shall not be dispensed from the street side of the mobile food vehicle.

M. A mobile food vehicle shall not be operated in reverse in order to attempt or make a sale.

N. When parked on a public or private right-of-way, a mobile food vehicle shall not be parked within thirty (30) feet of an intersection with another public or private right-of-way boundary.

O. No person shall use private real property for any activity requiring a permit under this Chapter without the written consent of the owner.

P. No person or mobile food vehicle regulated by this Chapter shall hawk or cry property, offers, contracts or services upon any location in the City, or use any loudspeaker, horn or other sound making device other than for the dissemination of music or words historically or customarily associated with the operation of that mobile food vehicle.

Q. Each and every mobile food vehicle shall carry at all times a “measuring wheel” with a measuring capacity of no less than 150 feet as a condition of licensure. Failure of any mobile food vehicle to carry such a measuring wheel or abide by any of the proximity distance restrictions included in this Chapter shall constitute a violation of this Chapter.

R. It shall be a violation of this Chapter for any mobile food vendor to operate within 500 feet of the boundary line of any fair, festival, special event or civil event that is licensed or sanctioned by the City of Niagara Falls, except where such vendor has obtained permission from the organizer of said special event.

S. Mobile food vendors invited to participate in a City-sponsored event shall not be required to obtain a permit pursuant to this section.

343.07 Permitted Locations

A. Subject to the prohibition contained in Section 343.07(D) herein, mobile food vendors may only conduct business on public property or within the public right of way at the following locations and only where there is adequate space to park a mobile food vehicle safely and legally:

Niagara Street

Main Street within 1 block of Third Street

Whirlpool within 1 block of Main Street

2nd Street between Ferry Avenue and Niagara Street

3rd Street between Wendel Way and Niagara Street

Old Main Street within 1 block of Rainbow Boulevard

The East Side of Hyde Park Boulevard between LaSalle Ave. and Independence Avenue.

Adjacent to any City owned park land provided such location shall not abut a residential Parcel

Within the defined parking areas of any City owned park or parking lot, provided any applicable fee for parking is paid.

Within a residential area for less than twenty (20) minutes at a single location or within an area where a block party is being conducted.

B. In the event the Niagara Falls Police Department determines that the operation of a mobile food vendor interferes with the operation of a street, sidewalk, right of way, City owned park or parking lot, the mobile food vendor shall move the mobile food vehicle upon request.

C. Mobile food vendors may only conduct business on private property on or at any private commercial lot provided the mobile food vendor has first obtained the written permission of the owner and there is adequate space to park the mobile food vehicle safely and legally.

D. It shall be unlawful for a mobile food vehicle vendor to park, stand, or operate in a location which is adjacent to or within a one hundred and fifty (150) foot radius of the primary entrance of any building or section of a building comprising a licensed food establishment, excluding any patio, awning or temporary enclosure attached thereto, the kitchen of which is open for serving food to patrons. This requirement may be waived if the mobile food vendor has obtained the written consent of the proprietor of the adjacent licensed food establishment(s).

343.08 Compatibility with Other Laws

This Chapter is intended to replace and supersede the requirements of Chapter 341 of the Codified Ordinances with respect to the regulation and permitting of mobile food vending only. To the extent that any provision of this Chapter is in conflict with a provision of Chapter 341 with respect to mobile food vending, this Chapter shall control.

343.09 Penalties and Enforcement

A. Any person who violates any provision of this Chapter shall be guilty of a violation. Each violation shall be punishable by a fine not to exceed \$250 or by imprisonment for a period not to exceed fifteen (15) days, or both.

B. The Superintendent of Police, or his designee, may suspend, rescind, confiscate and/or revoke any permit issued under this Chapter for good cause or in the event of any emergency requiring the same.

C. This Chapter shall be enforced by the Police Department, the Fire Department and the Code Enforcement Department of the City of Niagara Falls, New York.

(Chapter adopted 10/19/2016)