



Setti D. Warren  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

**#276-17**  
Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
[www.newtonma.gov](http://www.newtonma.gov)

**Barney Heath**  
Director

---

**MEMORANDUM**

**DATE:** November 9, 2017

**TO:** Councilor Ted Hess-Mahan, Chairman  
Members of the Zoning and Planning Committee

**FROM:** Barney Heath, Director, Department of Planning and Development  
James Freas, Deputy Director

**RE:** #276-17 – THE ECONOMIC DEVELOPMENT COMMISSION, COUNCILORS FULLER, HESS-MAHAN, KALIS, LENNON, LIPOF, NORTON, AND SANGIOLLO requesting amendments to Sections 17-46 through 17-50 in order to allow Food Trucks to locate and operate on public streets in Newton subject to licensing by the Health Department and to location permitting requirements, initially restricted to Wells Avenue; and introducing new rules applicable to all Food Trucks operating in the City; and requesting amendments to Chapter 30 to allow Food Trucks in the Public Use District subject to the same restrictions and requirements.

**MEETING DATE:** November 13, 2017

**CC:** City Council  
Planning and Development Board  
Economic Development Commission  
Donnalyn Kahn, City Solicitor  
Deborah Youngblood, Commissioner of Health & Human Services  
Kathryn Ellis, Economic Development Director

#

---

Over the last several years the Food Truck movement has grown in Boston and its suburbs and is increasingly viewed as an exciting new food amenity option. For Newton, allowing food trucks on Wells Avenue could be a relatively simple way to bring a degree of street vitality to the office park while also introducing a greater diversity of much needed food amenities, all of which serves to make the park more interesting for an innovation industry workforce and therefore more attractive as a location for the kinds of tech companies the City is seeking to attract in the N<sup>2</sup> Innovation District. The

proposed ordinance provides a regulatory structure for allowing food trucks at Wells Avenue only with the Planning Department responsible for administering a location permit program.

#### Current Ordinance

Newton currently regulates food trucks under the regulations governing “hawkers and peddlers” in Chapter 17 of the City Ordinances. Most significantly, a food truck under these rules must move every five minutes a minimum of 250 feet unless actively serving customers. Further, these trucks are prohibited from business districts or operating within 1000 feet of schools, the Crystal Lake bathhouse, and the McGrath Pool. Rules similar to these are common in the area and effectively prohibit modern food trucks from operating in Newton. Ice cream trucks and canteen trucks currently operate in Newton under these rules.

Beyond the rules above, Food Trucks operate in the City under a variety of different rules, which the proposed ordinance will largely leave intact. For example, many special event vendors happen to use food trucks, licensed by the Health Department. Similarly, businesses or residents can hire a food truck operator as a caterer for their private event. All existing licensing by the Health Department, as it applies to food trucks, will remain the same.

#### Proposed Ordinance

The proposed Food Truck Ordinance creates a food truck location permitting program – restricted to Wells Avenue, establishes new rules for food trucks, and for the first time identifies food trucks as a use in the Zoning Ordinance. The following provides greater detail on the proposed ordinance by section and a draft of the proposed ordinance is attached.

Sec 17-46 – Defines food trucks. This definition is based on that used in several communities in the region. In using the term “food establishment”, the definition connects directly to the health code.

Sec. 17-47 – This section confirms that a license from Newton’s Health Department is required in order to operate a food truck in Newton under this program.

Sec 17-48 – This section limits food trucks to Wells Avenue and gives the Planning Department responsibility to determine the specific locations on Wells Ave where the trucks may locate as well as their operating time periods.

Sec 17-49 – This section establishes a one year food truck location permit program in the Planning Department. The Department would be responsible for approving the food trucks that apply to operate in the locations identified according to Section 17-48. The application requirements are listed.

Sec 17-50 – This section provides a list of rules for all food trucks meant to address potential nuisance concerns and ensure safe and environmentally sound operation. To those ends, food truck operators are required to manage litter, control noise, limit encroachment into the sidewalk, and use environmentally friendly products and operations where possible.

Chapter 30 – Zoning Ordinance – The purpose of the zoning amendments is to establish food trucks as an allowed accessory use in the Public Use District. Newton’s streets are zoned Public Use. In defining this use and allowing it under these requirements in the Public Use District, the City is clarifying by extension that food trucks are not allowed on private property in other districts outside of special events or catering type situations. All of the requirements outlined above still apply and food trucks would still only be allowed on Wells Avenue.

#### When is a Food Truck a Food Truck?

In regulating food trucks under the proposed ordinances, particularly the Zoning Ordinance, it is important to distinguish between when a food truck is acting as a food truck as opposed to when one is serving as a caterer or food vendor at a special event. This ordinance is meant to address food trucks acting as food trucks; a food truck parked on the street and serving prepared food to individuals. This idea of a food truck is what one sees in Boston and other communities and is generally the common conception. However, a person operating a food truck business can also cater a private function or event or can serve as a food vendor at a special event such as Newton experiences during the 4<sup>th</sup> of July event or the Boston Marathon. The proposed ordinance takes care to not include these alternative event-based uses of a food truck within the proposed regulations and restrictions as these uses of a food truck are currently allowed and there is no intention to change that situation.

In order to prevent the potential abuse of the event-based allowance for food trucks, it is important to clarify what distinguishes between a food truck serving an event verse a food truck that effectively is operating as a “use” under the Zoning Ordinance. Planning and Law Department staff identified a test that distinguishes between these two scenarios. A food truck constitutes a use under the Zoning Ordinance if:

1. A food truck is at the location in some form of frequent regular schedule; and
2. The food truck is serving the general public with individual points of sale.

#### Food Truck Research

Interest in food trucks as a means to bring variety into food amenity choices has risen dramatically across the United States over the last decade. Beginning with a few pioneering cities, the idea has expanded to cities of all sizes and, increasingly, into the suburbs. Close to Newton, Boston, Cambridge, Somerville, Brookline, and Needham have all passed ordinances to encourage food trucks in some manner in their respective municipalities. Overall, the findings seem to point to a range of benefits in promoting food trucks in a community.

Food trucks are literally trucks with on-board food preparation. What distinguishes the modern concept of food trucks from those of the past is a focus on often innovative or unique food offerings with a specialized and limited menu. This sense of variety and innovation is what has made the food truck movement so popular, particularly amongst young professionals. The mobility coupled with this specialization and variety offered by food trucks has led to some interesting research findings including from a 2015 study by the Federal Reserve, “that food trucks did not simply cannibalize the market for brick-and-mortar restaurants, but actually expanded the market for food-away-from-home by increasing the net variety of available food options.”

An interesting trend in the food truck industry that has become apparent as the movement has matured is that of highly successful food trucks transitioning into brick and mortar restaurants. Effectively, the food truck approach becomes a form of business incubator for innovative restaurant ideas as well as a way for a potential restaurant operator to relatively simply test locations. Locally, the food truck Bon Me has opened several brick and mortar locations, including one in Chestnut Hill and the food truck Clover has similarly opened multiple locations but further, has now discontinued its food truck business in order to focus on its restaurant locations.

Generally, many communities have opted to allow food trucks in so-called “underserved” locations where there are limited restaurant or food amenities available and for the foreseeable future, that appears to be the recommended course. As an example, Boston permits food trucks only in specified locations and Needham has only allowed food trucks in the Needham Crossing business park. Some communities have created highly successful food truck courts.

### Meals Tax

The issue of whether food trucks collect the meals tax and where the local portion of that tax goes is an important one that staff is has been working with the Department of Revenue to resolve. Food trucks do collect meals tax. Under DOR rules, they are treated as a “transient vendor”. There are two types of transient vendor under these rules – those with a fixed location such as a food vendor at fair or special event, and those that drive around like an ice cream truck or a canteen. Fixed location meals taxes go to the host community while the drive around meals taxes collected go to the community where the business is located. DOR has to-date treated food trucks as a drive-around vendor. City staff have had discussions to update these rules, reflecting that, under Newton’s, and most other food truck ordinances, the food trucks operate from fixed locations, and therefore, the local portion of the meals tax should come to the City.

### Recommendations

The food trucks ordinance was approved by the Programs and Services Committee on November 8, 2017. The Planning Department recommends approval of the proposed ordinance amendments.

# DRAFT

## Food Truck Ordinance

### Chapter 17 – Licensing and Permits Generally

#### Article III. Hawkers, Peddlers, Food Trucks and Canvassers

##### Division 3. Food Trucks

##### Sec. 17-46. Food Trucks Defined

A readily movable trailer or motorized wheeled vehicle, currently registered with the Massachusetts Division of Motor Vehicles, designed and equipped to cook, prepare, and/or serve food for human consumption as a mobile food establishment.

##### Sec. 17-47. License Required

No food truck may operate without a license issued by the Commissioner of Health and Human Services and are subject to the provisions of Chapter 30, Zoning.

##### Sec. 17-48. Food Truck Locations

On-street food truck locations shall only be permitted on Wells Avenue. The Department of Planning and Development shall determine the specific location(s) and time periods during which permitted Food Trucks will be allowed to operate on Wells Avenue, taking into account public safety for vehicles and pedestrians. This restriction, and the following permit requirement, does not apply to Food Trucks catering a special event or similar occurrence.

##### Sec. 17-49. Location Permit to Operate on Public Property

In addition to the license required in Sec. 17-47, a food truck operator wishing to operate on-street must obtain a location permit from the Department of Planning and Development and shall submit a permit application on a form provided by said Department, which at a minimum shall include:

1. A description of the business;
2. The location and time period, as determined by sec 17-48, for which a location permit is sought and during which, the vendor will be stationary and serving food;
3. Description of the Food Truck's presence on the street including any signs or objects that will be proposed to be placed on the sidewalk.
4. Proof that the vehicle has passed all necessary inspections required by the Newton Fire Department
5. Proof of a general liability policy in effect during all days and times for which a location permit is sought that names the City as an additional insured and is in a form and for an amount approved by the City;

Such a location permit exempts the permitted food truck from other City requirements for Hawkers and Peddlers in sections 17-27 through 17-29. The location permit shall have a duration of up to one year

## DRAFT

and is revocable based on non-compliance with the requirements of this ordinance. Should the number of location permit applicants exceed available locations, the Director of Planning and Development shall create an equitable distribution of available locations among qualified applicants. The Director has the authority to not issue a location permit based on legitimate public objectives to diversify food truck offerings in an area or due to issues related to past operations of the Food Truck vendor. No permitted Food Truck shall cease operations during the period covered by the location permit without notifying the Department of Planning and Development.

### Sec. 17-50. Food Truck Rules

The following requirements shall apply to all food trucks operating in the City.

1. All food truck operators must comply with all applicable federal, state, and local laws, regulations, and by-laws, any conditions on a City license or permit, and any applicable City policies, procedures, standards and guidelines. All licenses are issued subject to the licensee's compliance with this Section and these regulations. Licensees shall supply such information as the City or its agent may require for purposes of the proper enforcement of these regulations. The City 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.
2. No food truck shall provide or allow any dining area, including but not limited to tables, chairs, booths, bar stools, benches, and standup counters.
3. All food truck operators shall offer a waste container(s) for public use that operators shall empty at their own expense. The food truck operator shall inspect all adjacent streets and sidewalks within 100 feet regularly for purposes of removing any litter found.
4. Food trucks are encouraged to provide consumers with compostable or recyclable single service articles, such as compostable forks and paper plates, and a waste, recycling container, and composting container for their disposal. No Styrofoam products or plastic bags are permitted.
5. No food truck shall make or cause to be made any unreasonable or excessive noise in violation of section 20-13 et seq.
6. Grease and grey water must be contained and disposed of in accordance with State Sanitary Code.
7. Food trucks shall be limited to no more than 25 feet in length.
8. For food trucks on public property, the City reserves the right to require a food truck operator to temporarily move a food truck to a nearby location if the approved location needs to be used for emergency purposes, snow removal, construction, or other public benefit.
9. Food trucks must conspicuously display their license and any required permit on the windshield of the truck.
10. No mobile food vendor licensee may transfer a mobile food vendor license except upon application to and approval by the Health and Human Services Commissioner of the transfer.

# DRAFT

## Chapter 30: Zoning Ordinance

### Sec. 2.3.2 Accessory Uses Allowed

#### B. Public Use District

##### 1. Food Trucks on Wells Avenue only subject to Sec. 6.7.6.

### Sec. 6.7 Accessory Uses

#### 6.7.6 Food Trucks

##### A. Intent. Food Trucks are intended to advance the following:

1. Bring variety to the availability of local food establishments;
2. Add vibrancy and interest to the street life of a district;
3. Encourage the advancement of new restaurants and food service businesses by serving as a form of business incubator for new restaurant ideas in a start-up phase; and
4. Create food options and amenities for underserved locations in the City.

##### B. Food Trucks Defined. Defined in City Ordinances Sec 17-46.

##### C. Rules for Food Trucks.

1. In the Public Use District, Food Trucks shall only locate on the public street 'Wells Avenue' according to City Ordinances Sec 17-48 and 17-49. Food Trucks are allowed on public land as part of a special event with a license from the Health Department.
2. A food truck shall not remain parked overnight.
3. A Food Truck is not required to provide parking.
4. A Food Truck must meet all of the requirements of City Ordinances sections 17-47 through 17-50.
5. A Food Truck operating as part of a special event or in a catering capacity for a private function is allowed in all districts.