

**ORDINANCE ESTABLISHING MOBILE FOOD VENDORS**

**BY COUNCIL:**

**August 26, 2024**

WHEREAS, mobile food vending is a popular and diverse part of local economies across the United States;

WHEREAS, the City of Jamestown desires to support economic development, foster opportunities for small businesses and encourage mobile food vending;

WHEREAS, the City of Jamestown seeks to increase consumer access to desired local foods;

WHEREAS, the City of Jamestown aspires to simplify food vending regulations; and

WHEREAS, the City of Jamestown seeks to protect public health and safety by ensuring mobile food vendors follow clear, narrowly tailored regulations that address demonstrable health and safety risks.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JAMESTOWN AS FOLLOWS:

**SECTION 1. PURPOSE.**

The purpose of this chapter is to promote and protect the health, safety and general welfare of the community and the preservation and protection of property of the City of Jamestown and its residents.

**SECTION 2. DEFINITIONS.**

The following words and phrases in this section shall have the meanings given, except where the context clearly indicates a different meaning:

- A. Applicant:  
A person applying to the City of Jamestown to operate as a mobile food vendor.
- B. Customer:  
Any person with whom a mobile food vendor conducts business, or any person who stops to contemplate conducting business with a mobile food vendor.
- C. Mobile Food Vending Unit:  
Any vehicle used to sell food or beverages by a mobile food vendor including, but not limited to, “food truck”, “food cart”
- D. Mobile Food Vendor:  
Any person who dispenses and sells food or beverages from a food vending unit.

- E. Mobile Food Distributor  
Any person who distributes food or beverages from a mobile unit at no cost to consumer.
- F. Prepackaged Food:  
Any commercially labeled and processed food that is prepackaged to prevent direct human contact with the food product upon distribution from the manufacturer, a food facility, or other approved source.
- G. Private Property:  
All property that is not public property.
- H. Public Property
  - a. Any property owned and operated by the City of Jamestown.
  - b. Public property includes all rights-of-way except public sidewalks and rights-of-way in city-owned parks.
- I. Sell:  
To transfer or exchange for value, to expose or offer for sale or exchange, or to procure, store, keep or have in one's possession or control for the purpose of selling.
- J. Person:  
Any individual, group of individuals, firm, partnership, company, corporation, trustee, association, or any public or private entity and includes the individual or entity's employees or agents.

### **SECTION 3. MOBILE FOOD VENDING BUSINESS PERMITTED.**

- A. A person or business entity may operate as a mobile food vendor in the City of Jamestown with mobile food vending permit under this chapter and any other licenses or permits that may be required by other applicable state or county law.
- B. A separate mobile food vending permit shall be required for each Food vending unit operated by a mobile food vendor.
- C. A violation of this Chapter may result in the suspension or revocation of a mobile food vending permit and civil penalties.

### **SECTION 4. PERMIT APPLICATION**

- A. Type
  - 1. Annual/Yearly - seasonal
  - 2. One-Day/Single-Use
- B. Application requirements:
  - 1. Proof of valid driver's license or non-driver's ID for owner-operation and all employees that will be working in the food truck
  - 2. proof of vehicle registration
  - 3. Photographs and/or detailed sketches, designs, plans, etc. of truck
  - 4. List of Employee/s: Name and Address
  - 5. Signed Hold Harmless Agreement
  - 6. Certificates of Insurance
  - 7. New York State Sales Tax Certificate
  - 8. Jamestown Fire Department Approved Inspection

9. A signed OPERATIONAL REGULATIONS form
10. An Initialed FOOD TRUCK SAFETY fact sheet
11. Chautauqua County Health Department Permit
12. Confirmation of application completion from Department of Development
13. City of Jamestown Registration of Business
14. Paid Fee/s

C. Additional application information:

1. The applicant's name, address and telephone number;
2. The name, address and telephone number of any associated entities or organizations that the applicant is representing and copies of documents verifying that relationship;
3. The applicant's primary residence and/or business addresses for the past five years;
4. A list of all vehicle license numbers, vehicle descriptions, vehicle identification numbers, and vehicle registration for the Food vending unit(s);
5. *[If the state or municipality requires a special license or permit for commercial vehicles]*
6. A copy or proof of any additional licenses or permits required by the State or municipality for the Food vending unit(s).

D. Requirements for Food vending unit drivers.

Any person who drives a Food vending unit shall hold a current [classification/level required by this state for Food vending units] driver's license.

E. Compliance of information.

1. The applicant shall complete the application and submit any and all additional information requested by the City of Jamestown as allowed by this section.
2. The applicant may submit one application for all vehicles which require a permit but shall pay a separate permitting fee for each permit.
3. Failure to submit a complete application may result in denial of a permit.

F. Health inspection.

Operator must obtain Chautauqua County Health Permit prior to submitting City of Jamestown permit application.

G. Issuance of Permit.

1. The City of Jamestown Clerk's office shall issue a mobile food vending permit to the applicant upon receipt of:
  - a) Complete application
  - b) Payment of fee
  - c) Departmental approvals
2. Annual permits shall be valid for one year from date of permit issue indicated.

H. Substitution of permitted Food vending units:

1. Permits are not transferable, nor shall a license authorize the activities licensed by any person other than the licensee, except that the sale of a Food vending unit identified in a license application, when replaced by another Food vending unit on a one-for-one basis, will not invalidate the original license nor require a new license application.
2. When replacing a Food vending unit with another vehicle, the licensee shall provide the City of Jamestown the information required by subdivision B of this section.

I. Transfer of assets.

If a mobile food vendor transfers its mobile food vending business assets, the recipient of the assets shall, before operating, apply for and obtain a new mobile food vending license from the City of Jamestown.

J. Fees.

1. The City of Jamestown is authorized to establish a reasonable schedule and classifications of fees.
2. An applicant shall pay the permit fee established by the City of Jamestown unless otherwise exempted.

K. Renewal.

1. Yearly permits shall be renewed annually.
2. If a renewal request has been submitted to the City prior to the current permit's expiration, the mobile food vendor may continue operations while an application for renewal is pending with the City of Jamestown.
3. Permit renewals are subject to current application fee/s for annual and/or one-day/single-use permits.
4. Permit renewals are *not* contingent upon a full re-application or re-approvals

L. Unlawful conduct.

It is unlawful for any person to intentionally provide false information or to intentionally omit information on an application for a license under this Chapter.

M. Application guide.

1. The City of Jamestown shall provide a guide for applicants.
2. The guide shall include instructions for applying for, obtaining, maintaining, and renewing a mobile food vending license and shall describe the standards used to inspect Food vending units.

3. The guide shall be made available to applicants at the Department of Development and on the City of Jamestown's website.

## **SECTION 5. MOBILE FOOD VENDING UNIT OPERATIONS.**

- A. Compliance with state and local law.
  1. Mobile food vendor shall follow any applicable state/county/local laws, including without limitation all
    - a) fire codes, zoning codes
    - b) occupational tax codes
    - c) any other applicable state or local code provisions.

- B. Approved Locations and Conditions

A mobile food vendor may operate in the following locations:

1. Public property.
  - a. Food vending unit must be parked more twenty (20) feet of an intersection.
  - b. FVU may operate from metered spaces upon payment of appropriate fees and may not remain in the same spaces in perpetuity, but must by definition, operate the FVU as a mobile unit (see Section 5. h).
  - c. When operating on public property, a mobile food vendor is subject to the same parking rules, restrictions, and obligations that a commercial vehicle would be subject to if not used by a mobile food vendor.
  - d. FVU may not set up any closer than 150 linear feet from the nearest brick-and-mortar restaurant, unless authorized by the Public Safety Committee.

2. Private property.

A mobile food vendor may operate on private property under the following circumstances:

- a. The property is in an Industrial, Commercial or Institutional Zoning District
  - b. The vendor has provided documented permission of the property owner and/or his or her designee to the Department of Development.
  - c. The property is in a R-1 or R-2 district and the mobile food vendor has been invited by a resident in that district to operate on their property for the purpose of serving food to that resident or their guests.
  - d. Insuring there is no interference with pedestrians or vehicles.

A mobile food vendor shall not interfere with or obstruct the passage of pedestrians or vehicles along any street, sidewalk or parkway.
  - e. FVU may not set up any closer than 150 linear feet from the nearest brick-and-mortar restaurant, unless authorized by the Public Safety Committee.
3. Private/Community Organization Event
    - a. Public Market
    - b. Public Parks
    - c. Special Events

C. Operating requirements

When operating, a mobile food vendor shall:

1. Maintain a Food vending unit in **good operating order and visual appearance**, including but not limited to, i.e.,
  - a) The absence of graffiti that is not a part of the overall design or art featured on the vehicle;
  - b) If a City of Jamestown official reports a FVU to be out of “good operating order” and/or “visual appearance”, that FVU is subject to a reinspection by the City.
2. Park with service window oriented to the sidewalk;
3. Serve customers through its service window;
4. Provide a waste receptacle for customers which is clearly marked and request its use by customers;
5. Pick up, remove and dispose of all refuse within 25 feet of the vendor’s operating area at the conclusion of service;
6. Display its mobile food vendor license and health certificate in a conspicuous location in its operating window for public view.

D. Rulemaking authority.

1. The City of Jamestown may promulgate administrative rules regulating mobile food vendors and mobile Food vending units to implement this Chapter.
2. Any rule adopted by the City of Jamestown must be narrowly tailored to address a demonstrable health or safety risk.
3. Rules adopted pursuant to this section *may not*:
  - a) Impose operating hours that differ from the operating hours imposed on restaurants;
  - b) Require a mobile food vendor to enter into any agreement with a commercial establishment or restaurant;
  - c) Require a mobile food vendor that only serves prepackaged food to have a handwashing sink in the vendor’s Food vending unit;
  - d) Require a mobile food vendor to obtain licenses or permits for the vendor’s employees;
  - e) Require a mobile food vendor to associate with a commissary if the vendor carries all the equipment necessary to comply with health and safety standards and [the state food code];
  - f) Limit the number of mobile food vendor permits issued;
  - g) Require the mobile food vendor to obtain any additional permits from the City of Jamestown unless special circumstances are identified by, or reported to and confirmed by the City
  - h) Require a mobile food vendor to stay in constant motion except for when serving customers;
  - i) Require a mobile food vendor to submit to inspections beyond the number and scope of the health inspections conducted by the City of Jamestown unless there is an investigation of a reported foodborne illness.

## **SECTION 6. FOOD SAFETY; HEALTH INSPECTIONS AND CERTIFICATES**

A. Food hygiene standards. Mobile food vendors shall follow New York State Department of Health guidelines and regulations as stated in SubPart 14-4 - Mobile Food Service Establishments and Pushcarts of the NYS Health Code

1. Food safety certification. At all times, at least one person working in a Food vending unit must hold a current food safety certification.

### **B. Mobile food vendor classifications.**

Upon receipt of a complete permit application, the City of Jamestown shall classify a mobile food vendor into one of the following three classifications for the purpose of conducting inspections:

1. Mobile Food Type I Vendor.

A vendor who dispenses prepackaged foods and/or non-time/temperature control for safety (non-TCS) beverages or poses a low risk of harm to the public shall be classified as a Mobile Food Type I Vendor.

2. Mobile Food Type II Vendor.

A vendor who dispenses food that requires limited handling and preparation shall be classified as a Mobile Food Type II Vendor.

3. Mobile Food Type III Vendor.

A vendor who prepares, cooks, holds and serves food from the Food vending unit shall be classified as a Mobile Food Type III Vendor.

### **C. Health inspections.**

For the purpose of protecting public health and safety, the City of Jamestown shall ensure that mobile food vendors are inspected on an ongoing, randomized basis pursuant to the frequency set forth in subdivision H of this section based on their classification and inspection grade.

### **D. Recordkeeping.**

The City of Jamestown shall establish and maintain a database to record the names of licensees, inspections, inspection reports and public complaints.

The database shall also allow mobile food vendors to provide periodic itineraries to the City of Jamestown.

E. Inspection criteria and grading.

1. Health inspections shall be conducted by Chautauqua County Department of Health using inspection criteria based on the state food code and a score-based grading system established by City of Jamestown based on objective factors.
2. The inspection criteria shall provide a letter-grade format that rates the vendor with an "A," "B," "C," or "F" grade, based on the score received during the inspection.
3. If a vendor receives two consecutive "A" grades, it shall be given a certificate of excellence.
4. If a vendor receives an "F" grade, the City of Jamestown must suspend the vendor's license until the vendor corrects the violations, is re-inspected and receives a grade of "A," "B," or "C."

F. Health Inspection certificate.

Upon completion of an inspection, Chautauqua County shall issue a health certificate to the mobile food vendor ***displaying the vendor's letter grade or achievement of excellence and record the grade in the database.***

G. Frequency of Inspections.

Health inspections shall occur on a randomized basis, pursuant to the following frequency, based on the mobile food vendor's classification.

1. Mobile Food Type I Vendors.

- a) A Mobile Food Type I Vendor shall be inspected only upon the City of Jamestown being notified of a public health or safety complaint regarding the vendor.
- b) If the inspection reveals a violation of law, the vendor shall become subject to inspections at the frequency set for a Mobile Food Type II Vendor until the vendor obtains a certificate of excellence.

2. Mobile Food Type II Vendors.

- a) A Mobile Food Type II Vendor shall be inspected once per calendar year.
- b) If a Mobile Food Type II Vendor receives a certificate of excellence, it shall become subject to inspections at the frequency set for Mobile Food Type I Vendors.
- c) If a Mobile Food Type II Vendor holding a certificate of excellence receives a score lower than an "A" on a subsequent inspection, the vendor shall lose its certificate of excellence and return to being inspected once per year.

3. Mobile Food Type III Vendors.

- a) A Mobile Food Type III Vendor shall be inspected twice per calendar year.
- b) If a Mobile Food Type III Vendor receives a certificate of excellence, it shall be inspected at the frequency set for Mobile Food Type II Vendors.



- c) If a Mobile Food Type III Vendor holding a certificate of excellence receives a score lower than an “A” on a subsequent inspection, the vendor shall lose its certificate of excellence and return to being inspected twice per calendar year.

H. Changing classifications.

1. The City of Jamestown shall specify the categories of foods or beverages that mobile vendors in each classification may serve.
2. If a mobile food vendor seeks to serve food or beverages that may require the vendor to be reclassified, the mobile food vendor shall notify the Chautauqua County Health Department of the nature of the food or beverages to be sold, and the City of Jamestown shall reclassify the mobile food vendor.

I. Notice of location for inspections; administrative warrant.

1. The mobile food vendor may provide the locations where the vendor operates on social media.
2. A mobile food vendor who does not provide the locations where the vendor operates on social media shall submit an itinerary for the current week to City of Jamestown completing the Microsoft form online.
3. The mobile food vendor may request the City of Jamestown obtain an administrative warrant prior to conducting an inspection.

J. Inspection costs.

- 1) The City of Jamestown shall determine the average cost of conducting a health inspection.
- 2) The City of Jamestown shall charge the mobile food vendor an inspection fee at the time the mobile food vendor applies for or renews a license, based on the average cost of conducting an inspection, multiplied by the number of annual inspections required for the upcoming year as required by this section.

**SECTION 7. LICENSE DENIAL, SUSPENION, REVOCATION AND APPEALS**

A. The City of Jamestown may deny, suspend or revoke a license issued under this Chapter. A license may be denied, suspended or revoked only for the following reasons:

1. Fraud, misrepresentation or a false statement contained in the application for a license.
2. Fraud, misrepresentation or a false statement made in connection with the selling of food.
3. Any facts or conditions that would justify the denial of the original application.
4. Three (3) or more violations of this chapter over a period of 12 months.
5. The receipt of an “F” grade during an inspection or an investigation in response to a complaint.

- B. Any person who has been notified regarding the denial of their mobile food vending application or the possible suspension or revocation of their mobile food vending license may appeal to the City of Jamestown within 14 calendar days of receipt of said notice.
  - 1. Other than as described in subdivision C of this section, no license shall be suspended or revoked prior to a hearing if a mobile food vendor requests a hearing within the 14-day period required.
  - 2. Upon receipt of a request for a hearing, the City of Jamestown shall hold a hearing within 14 calendar days and issue findings of fact, conclusions of law and a decision.
- C. When circumstances demonstrate that continued operation by a mobile food vendor poses an imminent threat to the public's health and safety, the City of Jamestown may immediately suspend or revoke a mobile food vending license.
  - 1. The mobile food vendor may request a hearing before City of Jamestown regarding the suspension or revocation within 14 calendar days of receiving notice of the suspension or revocation.
- D. Any hearing regarding the summary suspension or revocation of a license shall be given priority over all potential license denial, suspension or revocation proceedings and shall be held within seven (7) calendar days from the date the City of Jamestown receives a mobile food vendor's request for a hearing.

The City of Jamestown shall issue:

- 1. findings of fact
  - 2. conclusions of law and a
  - 3. decision.
- E. It is unlawful for a mobile food vendor whose license has been suspended or revoked to operate. If the City of Jamestown suspends or revokes a license, the mobile food vendor shall immediately cease all food vending operations.
  - F. A mobile food vendor aggrieved by an order issued by the City of Jamestown may appeal the order to state district court.