

ARTICLE X. - FOOD AND ICE CREAM TRUCKS

Sec. 32-275. - Purpose.

The purpose of this article is to provide for regulations relating to the operation of food and ice cream trucks within City of Portsmouth public roadways in order to promote a vibrant sense of place and local entrepreneurship. In recognition thereof, reasonable regulation of street activity is necessary to protect the public health, safety, and welfare, and the interest of the city in the primary use of public streets by vehicular and pedestrian traffic.

([Ord. No. 2016-08](#), § 2(Exh. A), 1-26-2016)

Sec. 32-276. - Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Designated parking location means a specific parking space chosen by the city manager or the city manager's designee, in consultation with the city engineer and the planning director, to be reserved for use by a food truck.

Downtown area means the area of the city located east of Effingham Street, north of Interstate 264, south of Queen Street, and west of the Elizabeth River's Southern Branch.

Food truck means a food establishment that is located in or upon a self-propelled vehicle licensed by the state department of motor vehicles, containing a mobile kitchen, where food and non-alcoholic beverages are stored, prepared, and served in individual portions to walk-up customers.

Food truck policies and procedures manual means a manual containing additional regulations and guidelines established by the city manager governing food trucks and/or food truck vending.

Food truck program means a set of regulations, policies, and procedures approved by the city manager and designed to provide a working regulatory environment within which food trucks shall operate.

Ice cream truck means a food establishment that is located in or upon a self-propelled vehicle licensed by the state department of motor vehicles that sells only ice cream, pre-packaged food, and non-alcoholic beverages, and that does not stop in a fixed location to wait for customers if no customers are present.

Point of sale means the area, such as a window, where the vendor and the customer interact through ordering and purchasing food and non-alcoholic beverages.

Vending means the sale of food and/or nonalcoholic beverages from a food or ice cream truck on any public street or sidewalk.

Vendor means any person, including an employee or agent of another, engaged in vending on any public street or sidewalk.

([Ord. No. 2016-08](#), § 2(Exh. A), 1-26-2016)

Sec. 32-277. - Violations of article.

- (a) Any person violating any provision of this article shall be guilty of a class 2 misdemeanor.
- (b) The placement of any vending unit or other type of device related to the operation of a food truck or ice cream truck on any sidewalk in violation of the provisions of this article is declared to be a public nuisance detrimental to the health, safety, and welfare of the residents of the city.

- (c) Operating a food truck outside of authorized areas, without the possession of all required permits, and/or without any required consent from the city or private property owners shall be considered a violation of this article and may result in suspension from the food truck program and/or the revocation of the vendor's business license.

([Ord. No. 2016-08](#), § 2(Exh. A), 1-26-2016)

Sec. 32-278. - Hours of operation.

No vendor shall operate except between the hours of 7:00 a.m. and 9:00 p.m. All mobile vending units must be removed from public property, designated parking locations, or approved vending locations during non-operating hours. Hours of operation may be extended by the city manager or the city manager's designee for special events.

([Ord. No. 2016-08](#), § 2(Exh. A), 1-26-2016)

Sec. 32-279. - Signs restricted.

- (a) All signs must be firmly attached at all points to the food or ice cream truck. No sign may protrude off of the vehicle or extend off of the vehicle such that any portion of the rear of the sign is visible.
- (b) Flags, banners, portable signs such as A-frames, or other decorative appurtenances, whether attached or detached, are prohibited.

([Ord. No. 2016-08](#), § 2(Exh. A), 1-26-2016)

Sec. 32-280. - Noise restricted.

- (a) Food and ice cream trucks, including those operating with a generator, are subject to the prohibitions on excessive sound established in section 24-255 (as the same may be amended, moved, or superseded from time to time). Generators shall not operate at decibel levels above the lesser of the limitations set forth in section 24-255(d) (as the same may be amended, moved or superseded from time to time) or the following limitations:
 - (1) *Residential zones; night.* In a residential zone between 10:00 p.m. and 6:00 a.m., sound meeting or exceeding 55 dBA.
 - (2) *Residential zones; day.* In a residential zone between 6:00 a.m. and 10:00 p.m., sound meeting or exceeding 65 dBA.
 - (3) *Commercial zones.* In a commercial zone, sound meeting or exceeding 75 dBA.
- (b) Generators shall either have labels evidencing compliant decibel levels or food or ice cream truck operators shall maintain documentation that shows the generator cannot operate above the decibel levels listed above.
- (c) Food trucks and vendors shall not play any music that is amplified outside of the food truck. Music may be played inside the truck for the entertainment of food truck staff. This requirement does not apply to ice cream trucks.

([Ord. No. 2016-08](#), § 2(Exh. A), 1-26-2016)

Sec. 32-281. - Lighting restricted.

No lighting, including but not limited to flashing lights and LED screens, shall be displayed on the exterior of the food truck. If a food truck or ice cream truck is operating after dark, appropriate lighting may be used to illuminate the menu board and the customer waiting area adjacent to the vehicle.

([Ord. No. 2016-08](#), § 2(Exh. A), 1-26-2016)

Sec. 32-282. - Control of trash, debris; containers.

- (a) All trash or debris accumulating within 20 feet of any food truck shall be promptly collected by the vendor and be disposed of in a proper trash container. No vendor shall leave their area of operation until all trash within 20 feet of the food truck has been removed and disposed of.
- (b) Food truck vendors must provide a receptacle for trash as part of their food truck vending. These receptacles may be placed on an adjacent sidewalk within ten feet of the vendor's food truck so long as the receptacle does not in any way impede pedestrian or bicycle pathways. Vendors must remove all receptacles when the food truck ceases its operation at each specific location.

([Ord. No. 2016-08](#), § 2(Exh. A), 1-26-2016)

Sec. 32-283. - Designated locations.

- (a) *Outside of Downtown area.* Food trucks may not operate in the public roadways in residential zoning districts outside of the Downtown area. Food trucks may operate in the public roadways in all non-residential zoning districts outside of the Downtown area under the following conditions:
 - (1) The food truck shall be lawfully parked in an existing parking space or parking area.
 - (2) The food truck shall not be within 25 feet of an intersection, crosswalk, driveway, bus stop, or fire hydrant.
 - (3) The food truck shall not be parked in a bicycle lane.
 - (4) Food trucks shall not be allowed to operate in the section of the Olde Towne neighborhood zoned Historic Residential (HR).
- (b) *City property.* Food trucks and other similar types of vehicles offering items for sale to the public may operate on city-owned parcels with permission from the city manager or the city manager's designee.
- (c) *Private property.* The operation of food trucks on private property is governed by section 40.1-4.5(F)(8) of the City of Portsmouth Zoning Ordinance as said section may be amended, moved, or superseded from time to time.
- (d) Under no circumstances shall a food truck operate within 100 feet of any military base installation, military office, or federal building without written permission from an authorized military official.
- (e) No food truck or ice cream truck shall operate on the same property or within 500 feet of a concession stand or other type of location where food or beverages are being sold in conjunction with a youth athletic or scholastic event with proceeds of said sales to benefit a not for profit youth-oriented organization, such as a youth sports league, public or private school, parent-teacher association, or scholastic club, unless the food truck or ice cream truck vendor has obtained the written consent of the not for profit youth-oriented organization.

([Ord. No. 2016-08](#), § 2(Exh. A), 1-26-2016)

Sec. 32-284. - Operating in the Downtown area.

- (a) Food trucks shall be allowed to operate in the Downtown area only during designated special events and festivals.
- (b) Food trucks shall not be allowed to operate within 500 feet of any entrance to the Portsmouth Pavilion on days when a concert is scheduled except in accordance with regulations and guidelines with section 32-286 and set forth in the Food Truck Policies And Procedures Manual. In establishing regulations and guidelines under this subsection, the city manager may consider the city's interests in public safety, traffic control, the success of the Portsmouth Pavilion as a regional entertainment venue, and such other factors as the city manager deems necessary or appropriate.
- (c) In order to vend in the Downtown area, food trucks must possess either a valid food truck or special events permit issued by the city.
- (d) Except for food trucks operating in conjunction with and at the request of a microbrewery, food trucks shall not park within 25 feet of the main entrance of any open restaurant.
- (e) Further rules for hours of operation, parking, and other logistical factors may be established by the city manager as provided in subsection 32-286(a).

([Ord. No. 2016-08](#), § 2(Exh. A), 1-26-2016; Ord. No. [2016-48](#), § 2, 7-12-2016)

Sec. 32-285. - Licensing requirements.

Except as provided in subsection 32-284(c), no person or business entity, including religious or charitable organizations, shall operate a food truck without a food truck permit issued by the city. The city manager is hereby authorized to establish food truck permit application and approval requirements. Every application for a food truck permit shall be accompanied by an application fee as set forth in appendix A to this Code. Vendors shall display or keep within their food truck proof of all required permits and licenses at all times during operation.

([Ord. No. 2016-08](#), § 2(Exh. A), 1-26-2016; Ord. No. [2017-36](#), § 1, 5-9-2017)

Sec. 32-286. - General operational requirements.

- (a) The city manager is hereby authorized to establish additional regulations and guidelines from time to time for the food truck program, including regulations governing the operation and licensing of food trucks.
- (b) At the city manager's option, additional regulations and guidelines established pursuant to this section 32-286 or section 32-285 may be set forth in the food truck policies and procedures manual.
- (c) Under no circumstances shall a food or ice cream truck operate on the same property or within 500 feet of a concession stand or other type of location where food or beverages are being sold in conjunction with a youth athletic or scholastic event with all proceeds of said sales to benefit a not for profit youth-oriented organization, such as a youth sports league, public or private school, parent-teacher association, or scholastic club. This requirement may be waived, in writing, with the permission of the body overseeing the concession sales.

([Ord. No. 2016-08](#), § 2(Exh. A), 1-26-2016)

Sec. 32-287. - Ice cream trucks.

This section shall apply only to ice cream trucks. In the event of a direct conflict between the provisions of this section and any other provision of this article, this section 32-287 shall control as to ice cream trucks.

- (a) Ice cream truck vendors may vend from a stopped vehicle in all zoning districts and on all city roadways, provided the vehicle does not impede traffic or use flashing lights while stopped.
- (b) Except as provided in subsection (c) below, ice cream trucks shall not stay parked and shall resume driving after the last customer in line is served. Ice cream trucks shall not wait at a location for customers to arrive for any period of time.
- (c) Ice cream trucks shall be allowed to vend from a single location at special events, provided that they have been properly permitted and have received permission from the city manager or the city manager's designee.
- (d) No ice cream truck may operate without a valid City of Portsmouth business license and a valid City of Portsmouth Health Department permit. Vendors shall display or keep within their ice cream truck proof of all required permits and licenses at all times during operation.

([Ord. No. 2016-08](#), § 2(Exh. A), 1-26-2016)

Sec. 32-288. - No property right in vendor locations.

Nothing contained in this article or any regulation established pursuant to this article shall create a property right for any vendor in any vending location, including any designated parking location. Any vendor shall comply immediately with the request of any police officer, firefighter, or city or public utility employee to move his mobile vending truck for emergency reasons or to permit maintenance of the pavement, utilities or other public facilities.

([Ord. No. 2016-08](#), § 2(Exh. A), 1-26-2016)