



City of Chicago



O2018-6162

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	7/25/2018
Sponsor(s):	Emanuel (Mayor)
Type:	Ordinance
Title:	Amendment of Municipal Code Titles 4 and 10 regarding pop-up food restaurant licensing and regulations
Committee(s) Assignment:	Committee on License and Consumer Protection

L1c



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

July 25, 2018

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Business Affairs and Consumer Protection, I transmit herewith an ordinance amending Chapter 4-8 of the Municipal Code and associated provisions regarding pop-up restaurant licensing.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Rahm Emanuel".

Mayor

ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Section 4-5-010 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

4-5-010 Establishment of license fees.

(Omitted text is unaffected by this ordinance)

(15) Food – Retail Food Establishment (4-8)

(Omitted text is unaffected by this ordinance)

Food – Shared Kitchen Short-Term User

Food – Tier I Pop-Up Food Establishment User

<u>5-day license</u>	<u>\$25.00</u>
<u>30-day license</u>	<u>\$50.00</u>
<u>90-day license</u>	<u>\$75.00</u>
<u>180-day license</u>	<u>\$100.00</u>
<u>1-year license</u>	<u>\$150.00</u>

Food – Tier II and Tier III Pop-Up Food Establishment User

<u>5-day license</u>	<u>\$50.00</u>
<u>30-day license</u>	<u>\$100.00</u>
<u>90-day license</u>	<u>\$150.00</u>

Food – Tier II Pop-Up Establishment Host per year \$150.00

Food – Tier III Pop-Up Establishment Host per year \$330.00

(Omitted text is unaffected by this ordinance)

(20) ~~Itinerant merchant~~ Pop-up retail user (4-212)

Per participating ~~merchant~~ user, payable at the time of application:

For a 14-day <u>5-day</u> license	\$25.00
For a 30-day license	\$50.00
For a 90-day license	\$150.00 <u>75.00</u>
For a 180-day license	<u>\$100.00</u>
For a 1-year license	<u>\$150.00</u>

(Omitted text is unaffected by this ordinance)

SECTION 2. Section 4-6-150 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

4-6-150 Junk peddlers.

(Omitted text is unaffected by this ordinance)

(f) *Prohibited acts.* It shall be unlawful for any licensee engaged in the business of junk peddler to:

(1) engage in the business of a pawnbroker, secondhand dealer or ~~itinerant merchant~~ pop-up retail user;

(Omitted text is unaffected by this ordinance)

SECTION 3. Section 4-6-270 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, as follows:

4-6-270 Home occupations.

(Omitted text is unaffected by this ordinance)

(e) *Activities not subject to licensure as a home occupation – Standards.* The following activities shall not be licensed as home occupations under this section:

(Omitted text is unaffected by this ordinance)

(10) restaurants or pop-up food establishments as defined in Section 4-8-010;

(Omitted text is unaffected by this ordinance)

SECTION 4. Section 4-8-010 of the Municipal Code of Chicago is hereby amended by inserting, in correct alphabetical order, the language underscored, as follows:

4-8-010 Definitions.

(Omitted text is unaffected by this ordinance)

“Food processing plant” means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer.

(Omitted text is unaffected by this ordinance)

“Pop-up food establishment” means an establishment that: (1) operates on a short-term, temporary basis in a specific building or portion thereof; and (2) where food is made available, sold, prepared or served, in exchange for money or other valuable consideration, for consumption by the public or by invitees of any person holding or required to hold a pop-up food establishment user license under this chapter.

“Pop-up food establishment host license” means a license issued under Section 4-8-045.

“Pop-up food establishment user license” means a license issued under Section 4-8-044.

(Omitted text is unaffected by this ordinance)

“Tier I pop-up food establishment” means a pop-up food establishment requiring a Tier I license under Section 4-8-044.

“Tier II pop-up food establishment” means a pop-up food establishment requiring a Tier II license under Section 4-8-044.

“Tier III pop-up food establishment” means a pop-up food establishment requiring a Tier III license under Section 4-8-044.

(Omitted text is unaffected by this ordinance)

SECTION 5. Section 4-8-020 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

4-8-020 Licensing requirements– Exceptions.

(a) (1) Retail food establishment – License required – Exceptions. Except as otherwise provided in subsection (e)(2) of this section, no person shall engage in the business of a retail food establishment without first having obtained a retail food establishment license.

(2) Retail food establishment operating a pop-up food establishment at another location – Recordkeeping required. A person holding a valid retail food establishment license under this chapter is authorized, during the duration of such license, to operate a pop-up food establishment at a location other than the premises for which the retail food establishment license was obtained without first having to obtain a pop-up food establishment user license under Section 4-8-044. Provided, however, that the following requirements shall apply: (A) Such retail food establishment licensee shall keep and maintain written records meeting the requirements of items (i) through (vii), inclusive, of Section 4-8-044(f)(6)(i) and of Section 4-8-044(f)(6)(ii) for each premises where the retail food establishment licensee operates a pop-up food establishment; and (B) If such retail food establishment licensee seeks to operate a Tier II or Tier III pop-up food establishment at such premises, the retail food establishment licensee shall ensure that the owner or lessee of that premises holds either a valid: (i) pop-up food establishment host license under Section 4-8-045; or (ii) shared kitchen license within the meaning of Section 4-8-038(b); or (iii) retail food establishment and shared kitchen supplemental license within the meaning of Section 4-8-038(b); and (C) If such retail food establishment licensee operates a Tier II pop-up food establishment at the applicable premises, only food which has been prepared, packaged and stored at such licensee’s properly licensed retail food establishment shall be sold or served at such licensee’s pop-up food establishment; and (D) Under no circumstances shall the retail food establishment licensee operate a pop-up food establishment at the same location for a period in excess of 90 days within any 365-day period or at a location where such operation is prohibited under the Chicago Zoning Ordinance.

(b) Wholesale food establishment – License required – Exceptions. Except as otherwise provided in subsection (e)(3) of this section, no person shall engage in the business of a wholesale food establishment without first having obtained a wholesale food establishment license.

(c) (1) Mobile food dispenser – License required. No person shall engage in the business of a mobile food dispenser without first having obtained a mobile food vendor license to engage in a mobile food dispenser business.

(2) Produce merchant – License required. No person shall engage in the business of a produce merchant without first having obtained a mobile food vendor license to engage in a produce merchant business.

(3) Mobile food preparer – License required. No person shall engage in the business of a mobile food preparer without first having obtained a mobile food vendor license to engage in a mobile food preparer business.

(4) Mobile desserts vendor – License required. No person shall engage in the business of a mobile desserts vendor without first having obtained a mobile food vendor license to engage in a mobile desserts vendor business.

(5) Mobile prepared food vendor – License required. No person shall engage in the business of a mobile prepared food vendor without first having obtained a mobile food vendor license to engage in a mobile prepared food vendor business.

(d) Shared kitchen – License required. No person shall engage in the business of a shared kitchen without first having obtained a shared kitchen license under Section 4-8-038.

(e) (1) Shared kitchen user – License required. Except as otherwise provided in subsection (e)(4) of this section, no person shall engage in the business of a shared kitchen long-term user or shared kitchen short-term user without first having obtained a shared kitchen user license under Section 4-8-039.

(2) Shared kitchen user – No retail food establishment license required when. If a person holds a valid shared kitchen user license under this chapter to engage in the business activity of shared kitchen long-term user or shared kitchen short-term user, such person shall not be required to obtain a retail food establishment license to engage in such activity in a properly licensed shared kitchen.

(3) Shared kitchen user – No wholesale food establishment license required when. If a person holds a valid shared kitchen user license under this chapter to engage in the business activity of shared kitchen long-term user or shared kitchen short-term user, such person shall not be required to obtain a wholesale food establishment license to sell or offer for sale at wholesale any article of food, confection, condiment, drink or ice prepared by such person in a properly licensed shared kitchen.

(4) Outdoor special event permittees – No shared kitchen user license required when. If a person holds a valid outdoor special event permit issued under Section 10-8-335, such person shall not be required to obtain a shared kitchen user license under this chapter to rent, lease or otherwise use kitchen space in a properly licensed shared kitchen to prepare any article of food, confection, condiment, drink or ice used or intended for use at the outdoor special event for which such outdoor special event permit has been issued.

(5) Shared kitchen user – Pop-up food establishment user license required when. A person holding a valid shared kitchen long-term or short-term user license

under Section 4-8-039 is authorized, during the duration of such license, to operate a pop-up food establishment at a particular location, if the shared kitchen user licensee obtains a pop-up food establishment user license under Section 4-8-044. Any such user license shall be issued free of charge to shared kitchen user licensees under this chapter.

(f) Pop-up food establishment – User license required when. Except as otherwise provided in Section 4-8-020(a)(2), no person shall engage in the business of a pop-up food establishment without first having obtained a pop-up food establishment user license under Section 4-8-044.

(g) Pop-up food establishment – Host license required when. No owner or lessee of any premises shall allow any person to engage in the business of pop-up food establishment on such premises unless:

(1) the premises is properly zoned for such activity; and

(2) if the pop-up food establishment user requires a Tier II or Tier III pop-up food establishment user license under Section 4-8-044 to operate on the premises, such owner or lessee holds either a valid: (i) pop-up food establishment host license under Section 4-8-045; or (ii) shared kitchen license within the meaning of Section 4-8-038(b); or (iii) retail food establishment license and shared kitchen-supplemental license within the meaning of Section 4-8-038(b); and

(3) the person engaged in the business of pop-up food establishment at such premises holds, as applicable, a valid Tier I, Tier II or Tier III pop-up food establishment user license under Section 4-8-044 and is operating at all times within the scope of the applicable license.

(fh) Except as otherwise provided in Section 4-8-020(a)(2), Section 4-8-039(b), or Section 4-8-044(c)(2), or Section 4-212-040(c), a separate license shall be required for each separate place of business.

(gi) Except as otherwise provided in subsections (e)(2) or (e)(3) of this section, if a person engages in both retail and wholesale food sales at the same establishment, only a retail food establishment license shall be required.

(hj) It shall be unlawful for any person to permit the installation, operation, or maintenance upon his premises of any automatic food-vending machine owned or operated by a person who has not obtained a license in accordance with the provisions of this chapter.

(ik) Nothing in this chapter shall be construed to prohibit the sale of whole and uncooked fruits and vegetables from a mobile food vehicle used to conduct a mobile food dispenser or mobile food preparer business, or otherwise as permitted in accordance with Section 4-244-010 and 4-244-020 pertaining to peddlers.

(jl) All charitable food dispensing establishments shall be exempt from the retail food establishment license.

SECTION 6. Section 4-8-041 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, as follows:

4-8-041 License fees.

Except as otherwise provided in this section, the license fees shall be as set forth in Section 4-5-010 and shall be paid before any license may be issued. All licenses shall expire on the date indicated on the face of the license.

(Omitted text is unaffected by this ordinance)

(f) Pop-up food establishment user and host licenses. Except as otherwise provided herein or in 4-8-044(c)(2), the fee for a pop-up food establishment user license and pop-up food establishment host license shall be as set forth in Section 4-5-010. Provided, however, that if a person holding a valid shared kitchen user license under this chapter applies for a pop-up food establishment user license under Section 4-8-044, such pop-up food establishment user license shall be issued to the licensee free of charge as required under Section 4-8-020(e)(5), as applicable.

SECTION 7. Chapter 4-8 of the Municipal Code of Chicago is hereby amended by inserting a new Section 4-8-044, as follows:

4-8-044 Pop-up food establishment user.

(a) *Definitions.* As used in this section, unless the context clearly indicates otherwise:

“Day(s)” means calendar days.

“Pop up food establishment” has the meaning ascribed to that term in Section 4-8-010.

“Potentially hazardous ingredient” has the meaning ascribed to the term “potentially hazardous food” in Section 4-8-038(a).

“Prepackaged and non-perishable food” has the meaning ascribed to that term in Section 4-8-010.

(b) *License classifications.* Pop-up food establishment user licenses shall be divided into three tiers based on the type of food activity occurring at the premises identified in the license application and the degree of relative risk (low, medium or high) of causing food-borne illness based on the food handling operations typically implicated in food-borne illness outbreaks. The holders of such licenses shall be entitled to engage in the business of pop-up food establishment subject to the following limitations:

(1) *Tier I license:* The holder of a Tier I license is entitled to sell or serve non-perishable food only that is commercially prepackaged in a food processing plant. On-site food preparation or on-site dining is not allowed under a Tier I license.

(2) *Tier II license:* In addition to selling or serving food authorized under a Tier I license, the holder of a Tier II license is entitled to sell or serve, in any combination, perishable, non-perishable, hot or cold prepackaged food only that has been prepared, packaged and stored off-site at a: (i) shared kitchen holding a valid shared kitchen license under Section 4-8-038, or (ii) retail food establishment holding a valid shared kitchen-supplemental license under Section 4-8-038. Final on-site preparation involving minimal assembly only of such prepackaged food is allowed (e.g. tossing a prepackaged salad; applying dressing to a prepackaged salad or sandwich; microwaving or heating pre-packaged food; plating prepackaged food, etc.). On-site dining is allowed under a Tier II license.

(3) *Tier III license:* In addition to selling or serving food authorized under a Tier I and Tier II license, the holder of a Tier III license is entitled to sell or serve perishable, non-perishable, hot and cold food prepared on-site at the pop-up food establishment. The holder of a Tier III license is authorized to operate as a full-service restaurant. On-site dining is allowed under a Tier III license.

(c) *Duration of license – Change of location authorized when.*

(1) *Duration of license.*

(i) Tier I licenses under this section shall be issued for a 5-day, 30-day, 90-day, 180-day or one-year period, and may be reissued for additional consecutive terms.

(ii) Tier II and Tier III licenses under this section shall be issued for a 5-day, 30-day or 90-day period and may be reissued for additional consecutive terms. Provided, however, that under no circumstances shall a Tier II or Tier III licensee under this section operate a pop-food establishment at the same location for a period in excess of 90 days within any 365-day period.

(2) *Change in location authorized when.* The holder of a Tier I, Tier II or Tier III pop-up food establishment user license under this section is authorized, throughout the duration of such user license, to change the location of the premises where the licensed pop-up food establishment operates without having to obtain a separate pop-up food establishment user license under this section for such location, if all of the following conditions are met:

(i) the operation of a pop-up food establishment at the desired location is permitted under the Chicago Zoning Ordinance; and

(ii) the licensee complies with the recordkeeping requirements set forth in subsection (f)(6) of this section; and

(iii) if the licensee is seeking to operate a Tier II or Tier III pop-up food establishment at the desired location, the owner or lessee of the premises where such licensee seeks to operate holds either a valid: (i) pop-up food establishment host license under Section 4-8-045; or (ii) shared kitchen license within the meaning of Section 4-8-038(b); or (iii) retail food establishment license and shared kitchen-supplemental license within the meaning of Section 4-8-038(b); and

(iv) the owner or lessee of the premises where the licensee seeks to operate the pop-up food establishment has authorized the licensee to use the premises to operate a pop-up food establishment, as evidenced by a written authorization to such effect identifying the start date and, if any, the end date to which such authorization applies.

(d) *License application.* In addition to the requirements in Section 4-8-030, an applicant for a pop-up user license shall provide the Department with the following additional information about the pop-up food establishment:

- (1) whether the applicant is applying for a Tier I, Tier II, or Tier III pop-up food establishment user license;
- (2) a statement describing the proposed menu of the food items that the applicant intends to sell or serve at the pop-up food establishment;
- (3) proof that the applicant has completed a consultation with the Department of Health to review the applicant's proposed menu, equipment and food-safety operations at the pop-up food establishment, as required under Section 4-8-044(f)(1); and
- (4) any other information that the Commissioner may reasonably require.

It is a condition of the license that all information in the license application be kept current. Any change in required information shall be reported in writing and without delay to the Commissioner.

(e) *License issuance prohibited when.* In addition to the prohibitions set forth in Section 4-8-025, no pop-up food establishment user license shall be issued under this section unless all of the following conditions are met:

(1) the operation of the pop-up food establishment at the desired location is permitted under the Chicago Zoning Ordinance; and

(2) if the applicant or licensee, as applicable, is seeking to operate a Tier II or Tier III pop-up food establishment at the desired location, the owner or lessee of the premises where the applicant or licensee seeks to operate the pop-up food establishment holds either a valid: (i) pop-up food establishment host license under Section 4-8-045; or (ii) shared kitchen license within the meaning of Section 4-8-038(b); or (iii) retail food establishment license and shared kitchen-supplemental license within the meaning of Section 4-8-038(b). Provided, however, that if the applicant or licensee is seeking only to operate a Tier I pop-up food establishment at the desired location, the requirements set forth in items (i) through (iii) of this subsection (e)(2) shall not apply; and

(3) the applicant for such license completes a consultation with the Department of Health, as required under subsection (f)(1) of this section.

(f) *Duties.* A licensee under this section shall have the following duties:

(1) *Consultation with the Department of Health – Required.* Prior to the issuance of any initial pop-up food establishment user license under this section, the applicant for such license shall complete a consultation with the Department of Health to review and approve for Code compliance the applicant's proposed menu, equipment, and food safety operations at the premises identified in the license application.

(2) *Conformity to approved menu required – Notification and approval of changes to approved menu required.* Each licensee under this section shall conform to the menu approved by the Department of Health. Prior to adding any new item of food to such menu, or any new or potentially hazardous ingredient to any approved item of food on such menu, such licensee shall first obtain written permission to do so from the Department of Health.

(3) *Special Equipment required when – Sanitation practices.*

(i) *Tier I licensees.* Persons holding a Tier I license only under this section shall not be subject to any special equipment requirements in connection with the operation of a Tier I pop-up food establishment. Provided, however, that such persons shall comply with all applicable sanitation and other requirements set forth in the Department of Health *Food Code Rules*.

(ii) *Tier II licensees.* Persons holding a Tier II license under this section shall equip the licensed premises, or ensure that the licensed premises is equipped, with: (A) a hand sink, which may be portable; and (B) sufficient time/temperature control equipment to ensure the safety of heated or refrigerated foods. Such equipment shall conform to the Department of Health *Food Code Rules* governing hand sinks and time/temperature control equipment. In addition, Tier II licensees shall comply with all applicable sanitation and other requirements set forth in the Department of Health *Food Code Rules*.

(iii) *Tier III licensees.* Persons holding a Tier III license under this section shall comply with all equipment and other requirements applicable to restaurants, as set forth in the Department of Health *Food Code Rules*.

(4) *City of Chicago Food Service Sanitation Certificate – When required.* Persons holding a Tier III pop-up user license under this section shall have on-site at the licensed location, at all times when such location is open to the public for business, at least one employee who holds a City of Chicago Food Service Sanitation Certificate issued by the Department of Health.

(5) *Shared kitchen users – Food preparation, packaging and storage requirements.* If a shared kitchen user licensee under this Chapter 4-8 holds a Tier II pop-up food establishment license under this section, only food which has been prepared, packed and stored by such licensee at a properly licensed shared kitchen shall be sold or served at such shared kitchen user licensee's pop-up food establishment. Provided, however, that any food authorized under a Tier I pop-up food establishment user license may also be sold or served at such licensee's pop-up food establishment.

(6) *Change of location -- Recordkeeping – Required when.*

(i) *Content of records.* If a pop-up food establishment user license is issued under this section, the holder of such license, during the duration of such license, changes the location of the premises where such licensee's pop-up food establishment is operating in accordance with subsection (c)(2) of this section, such licensee shall keep and maintain a written record containing the following information about each such premises: (1) the address of the premises; (2) the name of the owner or lessee of the premises; (3) the date(s) and time(s) of operation of the pop-up food establishment at the premises; (4) a copy of all agreements, which shall be in writing, entered into by the licensee with the owner or lessee of the premises where the pop-up food establishment is operating, including the effective date and, if any, the termination date of any such agreement; (5) if the pop-up food establishment discontinues, ends, terminates or otherwise withdraws from any such agreement, a record of the date on which such act occurred; (6) if the licensee operates a Tier III pop-up food establishment at the premises, the name of the person(s) holding a valid City of Chicago Food Sanitation Certificate, issued by the Department of Health, during the applicable period of operation at such premises; and (7) any other information the Commissioner may reasonably require in duly promulgated rules.

(ii) *Maintenance and inspection of records.* The records required under subsection (f)(6)(i) of this section shall be maintained by the licensee for a period of at least two years after the date of entry of such records. Except in cases where a licensee under this section consents to disclosure of such records or an exception to a warrant applies, including exigent circumstances, such records shall be subject to disclosure to an authorized city official, upon request by such official, pursuant only to a proper search warrant, administrative subpoena, judicial subpoena or other lawful procedure to compel the production of records that affords the licensee an opportunity for precompliance review by a neutral decisionmaker.

(g) *Prohibited acts.*

(1) It shall be unlawful for any licensee under this section to cater foods from the licensed pop-up food establishment location.

(2) It shall be unlawful for any licensee under this section to operate a pop-up food establishment in any: (i) non-stationary structure; or (ii) vehicle of any type, whether mobile or non-mobile; or (iii) building or portion thereof that the Commissioner determines, in duly promulgated rules and based on the building's condition, use or occupancy type, is unsafe or unsuitable for use as a Tier I, Tier II or Tier III pop-up food establishment, as applicable.

(3) It shall be unlawful for any licensee under this section to operate a pop-up food establishment in a private home or in any room used as sleeping or living quarters.

(h) *Violation --Penalty.* In addition to any other penalty provided by law, any person who violates this section shall be subject to the fine set forth in Section 4-8-068.

(i) *License suspension or revocation -- Imminent threat -- Post-deprivation hearing authorized when.* Any violation of this section may result in license suspension or revocation in accordance with Section 4-4-280. Provided, however, that if the Commissioner has good cause to believe that a licensee under this section is operating a pop-up food establishment in violation of this Code or any other applicable law and that continued operation of the establishment at the licensed location poses an imminent danger to the public health or safety, the Commissioner may order the immediate temporary suspension of such license for a period not to exceed ten days. Notice of the temporary suspension and the grounds for that suspension shall be sent or delivered to the licensee without delay. The licensee shall have an opportunity for a hearing before the Department of Business Affairs and Consumer Protection prior to the expiration of the ten-day temporary suspension period. If the licensee fails to request a hearing within the prescribed time indicated on the notice, or requests a hearing but fails without good cause to appear at such hearing, the pop-up food establishment user license shall be deemed revoked. Nothing in this section shall prevent the Department from suspending the licensee's pop-up food establishment user license for a longer period of time or from revoking the license in accordance with Section 4-4-280.

(j) *Enforcement.* The Department of Business Affairs and Consumer Protection and Department of Health are authorized to enforce this section.

SECTION 8. Chapter 4-8 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows; and by relocating such renumbered section, in its entirety and in correct numerical order, in the Municipal Code:

4-8-045047 License – Posting.

(Omitted text is unaffected by this ordinance)

SECTION 9. Chapter 4-8 of the Municipal Code of Chicago is hereby amended by inserting a new Section 4-8-045, as follows:

Pop-up food establishment host.

(a) *Definitions.* As used in this section, unless the context clearly indicates otherwise:

“Pop-up food establishment” has the meaning ascribed to that term in Section 4-8-010.

“Pop-up food establishment host” means the owner or lessee of any building, or any premises within a building, or any portion thereof, who rents, leases, or otherwise makes space available, for consideration, within such building or premises for use as a pop-up food establishment.

“Pop-up food establishment user license” has the meaning ascribed to that term in Section 4-8-044.

“Tier I pop-up food establishment” has the meaning ascribed to that term in Section 4-8-010. Tier I pop-up food establishments are limited to the activities set forth in Section 4-8-044(b)(1).

“Tier II pop-up food establishment” has the meaning ascribed to that term in Section 4-8-010. Tier II pop-up food establishments are limited to the activities set forth in Section 4-8-044(b)(2).

“Tier III pop-up food establishment” has the meaning ascribed to that term in Section 4-8-010. Tier III pop-up food establishments are limited to the activities set forth in Section

4-8-044(b)(3).

(b) *Pop-up food establishment host license – Required when – Exceptions.* No person shall engage in the business of pop-up food establishment host without first having obtained a pop-up food establishment host license under this section. Provided, however, that a pop-up food establishment host license under this section shall not be required if:

(1) the owner or lessee of the building or premises housing the pop-up food establishment holds either: (i) a valid shared kitchen license within the meaning of Section 4-8-038(b); or (ii) a valid retail food establishment license and shared kitchen-supplemental license within the meaning of Section 4-8-038(b); or

(2) the owner or lessee of the building or premises housing the pop-up food establishment only allows Tier I pop-up food establishments to operate in such building or premises; or

(3) the premises is a private residence and the occupant thereof hires a chef to prepare or serve food within that residence for such occupant's own consumption or for consumption by such occupant's invited guests; or

(c) *License classifications.* Pop-up food establishment host licenses shall be divided into two tiers based on the type of food activity occurring on the premises identified in the license application. The holders of such licenses shall be entitled to engage in the business of pop-up food establishment host subject to the following limitations:

(1) *Tier II host license:* The holder of a Tier II host license under this section is authorized to allow Tier I and Tier II pop-up food establishments to operate at the licensed location.

(2) *Tier III host license:* The holder of a Tier III host license under this section is authorized to allow Tier I, Tier II and Tier III pop-up food establishments to operate at the licensed location.

(3) *Duration of license.* Pop-up food establishment host licenses shall be issued for a period of one-year and shall be renewable for additional one-year terms. The fee for a pop-up establishment host license shall be as set forth in Section 4-5-010, and shall be determined based on the type of food activity occurring on the licensed premises, as follows: (i) If the licensee allows or intends to allow Tier II pop-up establishments only to operate on the licensed premises, the fee for the pop-up food establishment host license shall be \$150.00 for a one-year term. If the license allows or intends to allow Tier III pop-up food establishments to operate on the

licensed premises, the fee for the pop-up food establishment host license shall be \$330.00 for a one-year term.

(d) *Application.* In addition to the requirements in Section 4-8-030, an applicant for a pop-up food establishment host license shall provide the Department with the following information:

(1) whether the applicant is applying for a Tier II or Tier III pop-up food establishment host license; and

(2) any other information that the Commissioner may reasonably require.

It is a condition of the license that all information in the license application be kept current. Any change in required information shall be reported in writing and without delay to the Commissioner.

(e) *Inspections.*

(1) Prior to issuing an initial Tier III pop-up food establishment host license under this section, the Department of Health shall inspect and approve the premises identified in the license application to ensure its suitability to house a Tier III pop-up food establishment.

(2) The Department of Health is authorized to conduct periodic inspections, during regular business hours or in case of an emergency, of the premises in which any Tier II or Tier III pop-up food establishment is located to ensure its compliance the applicable health, safety, equipment and sanitation requirements of the Code and applicable Department of Health *Food Code Rules*.

(f) *License issuance prohibited when.* In addition to the prohibitions set forth in Section 4-8-025, no pop-up food establishment host license shall be issued under this section:

(1) if the applicant for such license fails to complete a consultation with the Department of Health, as required under Section 4-8-045(f)(1); or

(2) if the operation of a Tier II or Tier III pop-up food establishment, as applicable, is not permitted under the Chicago Zoning Ordinance at the premises identified in the license application; or

(3) if the condition, use or occupancy type of the building or premises identified in the license application has been determined by the Commissioner, in duly promulgated rules, to be unsafe or unsuitable for use as a Tier II or Tier III pop-up food establishment; or

(4) if the premises identified in the license application is a private home or dwelling unit or is used as living or sleeping quarters.

(g) *Duties.* A licensee under this section shall have the following duties:

(1) *Consultation with Department of Health – Required.* Prior to the issuance of any Tier II or Tier III pop-up food establishment host license under this section, the license applicant shall complete a consultation with the Department of Health to review and approve the suitability of the applicant’s premises for housing a Tier II or Tier III pop-up food establishment, as applicable.

(2) *Ensuring that users are properly licensed – Required.* A licensee under this section shall ensure that any person engaged in the business of pop-up food establishment at the licensed host location: (i) holds a valid pop-up food establishment user license under Section 4-8-044 and is operating within the scope of such license, and (ii) does not operate at the licensed host location for longer than the designated period of time indicated on the face of such person’s user’s license, or (iii) if the person engaged in business of pop-up food establishment at the licensed host location holds a Tier II or Tier III pop-up food establishment user license, such person does not operate such pop-up food establishment at the licensed host location for a period in excess of 90 days within any 365-day period.

(3) *Recordkeeping – Required.* A licensee under this section shall keep and maintain written records containing the following information: (i) a list of all pop-up food establishment users operating at the licensed host location and their contact information; (ii) for each such user, a copy of the menu approved by the Department of Health for use by such user at the licensed location; (iii) a list setting forth the date(s) and time(s) each such user operated at the licensed location; (iv) if a Tier III pop-up food establishment operates at the licensed location, the name of the person(s) holding a valid City of Chicago Food Service Sanitation Certificate, issued by the Department of Health; (v) a copy of all agreements entered into by the pop-up food establishment host with each pop-up food establishment user, including the effective date and termination date of each such agreement; (vi) if the pop-up food establishment user discontinues, ends, terminates, or otherwise withdraws from any contract or agreement with the pop-up food establishment host or otherwise indicates his or her intent to stop operating at the host’s licensed location, a record of the date on which such act occurred. The records required to be maintained by the pop-up food establishment host under this subsection (f)(3) shall be maintained by such licensee for a period of at least two years after the date of entry of such record. Except in cases where a licensee under this section consents to disclosure of the applicable pop-up food establishment user records required under this section or an exception to a warrant applies, including exigent circumstances, such records shall be subject to disclosure to an authorized city official pursuant only to a proper search warrant, administrative subpoena, judicial subpoena or other lawful procedure to compel the production of records that affords the licensee an opportunity for precompliance review by a neutral decisionmaker.

(4) *Special equipment required when – Sanitation practices.*

(i) *Tier II licensees.* Persons holding a Tier II pop-up food establishment host license under this section shall equip the licensed premises, or ensure that the pop-up food establishment user equips the licensed premises, with: (A) a hand sink, which may be portable; and (B) sufficient time/temperature control equipment to ensure the safety of heated or refrigerated foods. Such equipment shall conform to the Department of Health *Food Code Rules* governing hand sinks and time/temperature control equipment.

(ii) *Tier III licensees.* Persons holding a Tier III pop-up food establishment host license under this section shall equip the licensed premises, or ensure that the pop-up food establishment user equips the licensed premises, with all equipment required in restaurants in conformity with the Department of Health *Food Code Rules*.

(h) *Violation –Penalty.* In addition to any other penalty provided by law, any person who violates this section shall be subject to the fine set forth in Section 4-8-068.

(i) *License suspension or revocation – Imminent threat – Post-deprivation hearing authorized when.* Any violation of this section may result in license suspension or revocation in accordance with Section 4-4-280. Provided, however, that if the Commissioner has good cause to believe that a licensee under this section is hosting pop-up food establishments at the licensed location in violation of this Code or any other applicable law, and that continued hosting operations at the licensed location pose an imminent danger to the public health or safety, the Commissioner may order the immediate temporary suspension of the pop-up food establishment host license for a period not to exceed ten days. Notice of the temporary suspension and the grounds for that suspension shall be sent or delivered to the licensee without delay. The licensee shall have an opportunity for a hearing before the Department of Business Affairs and Consumer Protection prior to the expiration of the ten-day temporary suspension period. If the licensee fails to request a hearing within the prescribed time indicated on the notice, or requests a hearing but fails without good cause to appear at such hearing, the pop-up food establishment host license shall be deemed revoked. Nothing in this section shall prevent the Department from suspending the licensee's pop-up food establishment host license for a longer period of time or from revoking the license in accordance with Section 4-4-280.

(j) *Enforcement.* The Department of Business Affairs and Consumer Protection and Department of Health are authorized to enforce this section.

SECTION 10. Section 4-156-640 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

4-156-640 Legal duties.

(a) A licensee and any person requiring a license under this Article shall have the following duties:

(Omitted text is unaffected by this ordinance)

(4) to ensure that each vendor, exhibitor or ~~itinerant merchant~~ pop-up retail user participating in the event has and posts all licenses required by law;

(Omitted text is unaffected by this ordinance)

(b) Any vendor, exhibitor or ~~itinerant merchant~~ pop-up retail user participating in an indoor special event shall have and post all licenses required by law.

(Omitted text is unaffected by this ordinance)

SECTION 11. Section 4-156-880 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

4-156-880 Legal duties.

A licensee under this Article VI shall have the following duties:

(Omitted text is unaffected by this ordinance)

(d) to ensure that each vendor, exhibitor or ~~itinerant merchant~~ pop-up retail user participating in the event has and posts all licenses required by law;

(Omitted text is unaffected by this ordinance)

(j) to ensure that any vendor, exhibitor or ~~itinerant merchant~~ pop-up retail user participating in an industrial venue event has, and posts, all licenses required by law.

SECTION 12. The header to Chapter 4-212 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

CHAPTER 4-212
~~ITINERANT MERCHANTS~~ POP-UP RETAIL USERS

SECTION 13. Section 4-212-010 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

4-212-010 Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

“Commissioner” means the ~~commissioner of business affairs and consumer protection~~ Commissioner of Business Affairs and Consumer Protection or the ~~commissioner's~~ Commissioner's designee.

~~“Itinerant merchant”~~ Pop-up retail user” or “user” means any merchant who (1) occupies or leases for ~~less than~~ or less a fixed indoor retail space for the sale of merchandise or provision of services, including, but not limited to, seasonal stores, warehouse sales, trunk shows, estate sales, trade shows or exhibitions; or (2) occupies or leases for ~~less than~~ or less a fixed outdoor retail space for the sale of merchandise or provision of services, including, but not limited to, pumpkin patches and Christmas tree lots; or (3) is the organizer or sponsor of a trade show or exhibition.

(Omitted text is unaffected by this ordinance)

SECTION 14. Section 4-212-020 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

4-212-020 License – Required.

(a) No person shall engage in the business of ~~itinerant merchant~~ pop-up retail user without first having obtained a license under this chapter.

(b) No trade show or exhibition shall be permitted to take place within the city unless the sponsor of such trade show or exhibition has first obtained ~~an itinerant merchant~~ a pop-up retail user license under this chapter.

SECTION 15. Section 4-212-030 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

4-212-030 License – Application – Investigation – Prohibition on license issuance – Revocation.

(a) An application for any ~~itinerant merchant~~ pop-up retail user license issued under this chapter shall be made to the ~~commissioner~~ Commissioner on forms provided by the

~~commissioner~~ Commissioner, in conformity with the general requirements of this Code relating to applications for licenses and with the specific requirements set forth in section 4-4-050.

(b) In addition to the information required under subsection (a) of this section, any applicant who is the organizer or sponsor of a trade show or exhibition shall identify the location, date(s) and time(s) of the applicable trade show or exhibition and shall provide the ~~commissioner~~ Commissioner with the following information about each ~~merchant~~ pop-up retail user participating in such trade show or exhibition: (1) the ~~merchant's~~ user's full legal name; (2) the ~~merchant's~~ user's residence address and telephone number; (3) the ~~merchant's~~ user's business address and business telephone number; (4) the ~~merchant's~~ user's Illinois Retailers' Occupation Tax number; (5) the name of the business entity or entities that the ~~merchant~~ user represents; (6) the type(s) of merchandise or service that the ~~merchant~~ user desires to sell at the trade show or exhibition; (7) the time(s) and date(s) that the ~~merchant~~ user will be present at the trade show or exhibition; and (8) any other information that the ~~commissioner~~ Commissioner may reasonably require.

(c) In addition to the information required under subsection (a) of this section, the applicant for an ~~itinerant merchant~~ pop-up retail user license shall provide the ~~commissioner~~ Commissioner with the following information: (1) the applicant's Illinois Retailers' Occupation Tax number; (2) the name of the business entity or entities that the applicant represents; (3) the type(s) of merchandise or service that the applicant desires to sell; (4) the location(s) where the applicant proposes to sell such merchandise or service; and (5) any other information that the ~~commissioner~~ Commissioner may reasonably require.

(d) In addition to the information required under subsection (a) of this section, the applicant for a produce merchant license shall provide the ~~commissioner~~ Commissioner with the following information: (1) the applicant's Illinois Retailers' Occupation Tax number; (2) the type(s) of produce that the applicant proposes to sell; and (3) any other information that the ~~commissioner~~ Commissioner may reasonably require.

(e) The ~~commissioner~~ Commissioner may investigate to ascertain whether any applicant for a ~~merchant~~ pop-up retail user license under this chapter is a proper representative of a reliable and responsible business entity, and whether the proposed sale of merchandise or commodities complies with other provisions of this Code. If the ~~commissioner~~ Commissioner finds that an applicant or licensee has misrepresented his affiliation or authority to represent any business entity or to sell such business entity's merchandise or services, or that the merchant or business entity that the merchant represents has admitted to committing deceptive business practices, or has been convicted of or entered a plea of nolo contendere to charges of deceptive business practices in any jurisdiction or has failed to remit taxes or fees owed to the city, or that the applicant or licensee has failed to comply with any provision of this Code applicable to the sale of merchandise or services, the ~~commissioner~~ Commissioner shall, as applicable, withhold

or revoke the license. In the case of revocation, the ~~commissioner~~ Commissioner may summarily revoke the license so long as the ~~commissioner~~ Commissioner provides the licensee with an opportunity for a hearing within 24 hours after such summary revocation occurs.

SECTION 16. Section 4-212-040 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, as follows:

4-212-040 License – Fee – Duration – Change of location.

(a) License fee. The fee for an ~~itinerant merchant~~ pop-up retail user license shall be as set forth in Section 4-5-010.

(b) Duration of license. Pop-up retail user licenses under this section shall be issued for a 5-day, 30-day, 90-day, 180-day or one-year period.

(c) Change in location authorized when. The holder of a pop-up retail user license under this chapter is authorized, throughout the duration of such license, to change the location of the premises where such licensee operates the business of pop-up retail user without having to obtain a separate pop-up retail user license for such location, if all of the following conditions are met:

(1) the operation of such business at the desired location is permitted under the Chicago Zoning Ordinance; and

(2) the location of the premises where the licensee conducts the business of pop-up retail user is a fixed indoor retail space for the sale of merchandise or provision of services and not an outdoor space; and

(3) the licensee complies with the recordkeeping requirements set forth in Section 4-212-043.

SECTION 17. Chapter 4-212 of the Municipal Code of Chicago is hereby amended by inserting a new Section 4-212-043, as follows:

4-212-043 Change of location – Recordkeeping – Required when.

(a) Content of records. If the holder of a pop-up retail user license, during the duration of such license, changes the location of the premises where such licensed user is operating in accordance with of Section 4-212-040(c), such licensee shall keep and maintain a written record containing the following information about each such premises: (1) the address of the premises; (2) the name of the owner or lessee of the premises; (3) the date(s) and time(s) of

operation of the pop-up retail user business at such premises; (4) a copy of all agreements, which shall be in writing, entered into by the licensee with the owner or lessee of the premises where the pop-up retail user business is operating, including the effective date and, if any, the termination date of each such agreement; (5) if the licensee discontinues, ends, terminates or otherwise withdraws from any such agreement, a record of the date on which such act occurred; and (6) any other information the Commissioner may reasonably require in duly promulgated rules.

(b) *Maintenance and inspection of records.* The records required under subsection (a) of this section shall be maintained by the licensee for a period of at least two years after the date of entry of such records. Except in cases where a licensee under this section consents to disclosure of such records or an exception to a warrant applies, including exigent circumstances, such records shall be subject to disclosure to an authorized city official, upon request by such official, pursuant only to a proper search warrant, administrative subpoena, judicial subpoena or other lawful procedure to compel the production of records that affords the licensee an opportunity for precompliance review by a neutral decisionmaker.

SECTION 18. Section 4-212-045 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

4-212-045 Trade shows and exhibitions – Free samples of food – When authorized.

~~Itinerant merchants~~ Pop-up retail users who conduct their business at a properly licensed trade show or exhibition shall be allowed to give away free samples of food at such trade show or exhibition, without having to obtain a pop-up food establishment user license under Section 4-8-044, if all of the following requirements are met: (1) such food is not a potentially hazardous food, as defined in Section 4-8-010; and (2) such food is processed or manufactured by a properly licensed entity.

SECTION 19. Section 4-212-055 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

4-212-055 Exemption from prohibition on outdoor operations.

Notwithstanding any language to the contrary in Section 17-3-0304, a licensee under this chapter shall not be required to conduct the business of ~~merchant~~ pop-up retail user within a completely enclosed building and may conduct the business of merchant outdoors.

SECTION 20. Section 4-212-070 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

4-212-070 Regulations.

The ~~commissioner~~ Commissioner shall have the authority to promulgate rules and ~~regulations~~ necessary to implement the requirements of this chapter.

SECTION 21. Section 10-8-335 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

10-8-335 Outdoor special events.

(Omitted text is unaffected by this ordinance)

(h) Except as otherwise provided in this subsection, preference among conflicting applications for special event permits shall be given to the application filed earliest. However, during the first ten business days of each calendar year, the department shall accept applications without giving preference to applications filed earliest. Any conflict among applications filed during that period shall be resolved by a lottery to be conducted by the department.

(Omitted text is unaffected by this ordinance)

(i) No later than 20 days prior to the date the event is scheduled to begin, the sponsor of the event shall submit all applications for any necessary licenses, including alcoholic beverage, food and/or ~~itinerant merchant~~ pop-up retail user licenses, to the department. The department shall forward the license applications to all appropriate departments. The departments shall review such license applications and either issue such licenses, or issue a written denial stating the reasons therefor, within ten days of receipt of the license application. The department shall forward the license applications to all appropriate departments. The departments shall review such license applications and either issue such licenses, or issue a written denial stating the reasons therefor, within ten days of receipt of the license application. If the department previously has issued a conditional permit, then within five days after the appropriate licenses have been issued and are received by the department, and all required plans approved, fees paid, and costs prepaid or bonds posted, or sooner if the event will occur sooner and doing so is reasonably practicable, the department shall issue the special event permit. If no conditional permit has been issued, then the procedure set forth in subsection (g) shall apply.

(Omitted text is unaffected by this ordinance)

SECTION 22. Following its passage and approval, this ordinance shall take full force and effect on December 1, 2018.