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Sponsor(s): Emanuel, Rahm (Mayor)
Type: Ordinance
Title: Amendment of various provisions of Municipal Code
regarding produce merchants
Committee(s) Assignment: Committee on License and Consumer Protection



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

May 9, 2012

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 various provisions of the Municipal Code regarding produce merchants.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

ORDINANCE

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

SECTION I. Chapter 4-8 of the Municipal Code of Chicago is hereby amended by deleting the language struck through and by inserting the language underscored, as follows:

4-8-010 Definitions.

The following definitions shall apply in the interpretation and the enforcement of this chapter and chapters 7-38, 7-40 and 7-42 unless the context clearly indicates that another meaning is intended. The listing of items as examples in any definition is intended to be illustrative and not exhaustive.

(Omitted text is not affected by this ordinance)

"Approved" means acceptable to the board of health based on its determinations to conformance with the appropriate standards and good health practices.

"Area underserved by grocery stores" means an area, designated by the commissioner of housing and economic development, that lacks adequate access to fresh and healthy food.

(Omitted text is not affected by this ordinance)

"Prepackaged and non-perishable food" means any food or beverage which is not capable of supporting rapid and progressive growth of microorganisms which may cause food infections; and which is packaged in a hermetically sealed container designed to keep the contents free of contamination by microorganisms and maintain the commercial sterility of its contents after thermal processing. The term shall include packaged candy, gum and confections and bottled or canned water or soft drinks, if the package, bottle or can includes a manufacturer's quality assurance date. In no case shall the term include fresh or processed meats, poultry, seafood, dairy products, eggs, or fresh fruit and vegetables.

"Produce" means whole and uncooked agricultural, plant-based items, including, but not limited to, fruits, vegetables, legumes, edible grains, nuts, spices, herbs and cut flowers.

"Produce merchant" means any merchant licensed as a mobile food dispenser who sells produce outdoors from a produce stand, and who conducts at least 50 percent of his operations in areas underserved by grocery stores, as defined herein, and whose stand is (1) located on a private or public property with the written permission of the property owner, or located on the public way in connection with a valid public way use permit issued pursuant to chapter 10-28-060 of this Code; (2) removed in its entirety from such private property or public way at the end of each business day; and (3) in compliance with all applicable requirements of the Chicago Zoning Ordinance, including, but not limited to, any requirement prohibiting commercial sales within residential districts.

"Produce stand" means a free standing, temporary structure located on a private or public property or on the public way, from which a produce merchant sells produce.

(Omitted text is not affected by this ordinance)

4-8-020 Licensing requirements– Exceptions.

(Omitted text is not affected by this ordinance)

(c) (1) No person shall engage in the business of a mobile food dispenser without first having obtained a mobile food dispenser license.

(2) No person shall engage in the business of a produce merchant without first having obtained a mobile food dispenser license to engage in a produce merchant business.

(Omitted text is not affected by this ordinance)

4-8-036 License – Application – Mobile food dispenser and mobile frozen desserts dispenser.

(Omitted text is not affected by this ordinance)

(c) In addition to the general application requirements, an applicant for a mobile food dispenser license to engage in a produce merchant business shall provide the commissioner of business affairs and consumer protection 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 may reasonably require.

4-8-040 License fees.

The license fees shall be as set forth in Section 4-5-010 of this Code and shall be paid before any license may be issued. All licenses shall expire in accordance with the terms of Section 4-4-021.

(Omitted text is unaffected by this ordinance)

(c) Mobile food dispenser license. A separate license is required for each vehicle or produce stand used by the mobile food dispenser or a produce merchant in the conduct of his business. The fee for such license shall be as set forth in Section 4-5-010.

(Omitted text is unaffected by this ordinance)

SECTION II. Chapter 7-38 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through, by inserting the language underscored and by adding new sections 7-38-42, 7-38-144, and 7-38-146, as follows:

7-38-085 Preparation and service of food and drink.

No food other than individual portions that are totally enclosed in a wrapper or container and which have been manufactured, prepared or wrapped in a food establishment licensed by the city or a food establishment which is operating under the state or local health authority, and provided the ordinance regulating same is substantially equal to this chapter, shall be sold or served from or by a mobile food dispenser, except the following:

(a) Individual portions of food that are totally enclosed in a wrapper or container and which have been manufactured, prepared or wrapped in a food establishment licensed by the city or a food establishment which is operating under the state or local health authority if the statute or ordinance regulating such food establishment is substantially equal to this chapter;

(ab) Coffee which is prepared in a duly licensed food establishment, refrigerated cream which is kept in a covered single-service container or an approved cream dispenser, and sugar which is served only in wrapped individual packages or in a covered closed pouring- spout type container, or in any other manner approved by the department of health, which is effective in preventing contamination by the customer;

(bc) Other bulk soft drinks or beverages which are dispensed from an approved dispenser only. These approved bulk soft drink dispensers shall be serviced and filled only at a duly licensed food establishment which serves as a commissary for the mobile food dispenser. The drink outlet on all bulk liquid dispensers shall be protected from ~~files~~ flies, dust and contamination by customers;

(ed) Ice cream, ice milk, frozen dessert mix, sodas, sundaes and other frozen desserts manufactured or processed on or served from the mobile vehicle which are prepared from ingredients dispensed only from dispensers approved by the department of health. Customers shall be served in single-service containers. Vehicles serving frozen desserts shall comply with rules and regulations of the department of health pertaining to mobile units handling frozen desserts.

(e) Whole and uncooked fruits or vegetables.

7-38-142 Produce merchants - Operational requirements - Unlawful acts.

It shall be unlawful for any produce merchant to engage in any of the following activities at any produce stand operated by such produce merchant:

(1) To equip such produce stand with an electronic sound-amplifying device;

(2) Unless specifically allowed by the commissioner of business affairs and consumer protection pursuant to objective criteria adopted by rule, to make sales from such produce stand between the hours of 10:00 p.m. and 6:00 a.m.;

(3) To fail to comply with any applicable rules and regulations, including, but not limited to, any rules and regulations governing the physical characteristics, size, appearance or signage of a produce stand;

(4) To conduct business activities at such produce stand in a manner that impedes the flow of vehicular or pedestrian traffic;

(5) To use a portable generator at such produce stand or to connect such produce stand to water, electrical or utility services of any type;

(6) To dump or dispose of water or waste onto the public way, private or public property or into the sewer system;

(7) To obstruct or block any sidewalk, driveway, public way, parking zone, loading zone or drop-off zone at or in connection with the operation of such produce stand;

(8) To sell non-produce items at such produce stand; provided, however, bottled-water may be sold from a produce stand;

(9) To combine any activity authorized under a mobile food dispenser license to engage in a produce merchant business with any activity for which a different or separate license or permit is required under this Code, other than a public way use permit issued under chapter 10-28 of this code, including, but not limited to, any permit required in connection with participation in any farmers' market, as defined in Section 4-12-010, or any outdoor special event, as defined in Section 10-8-335;

(10) To display produce items at such produce stand on the ground or in any area other than the designated produce stand;

(11) To fail to affix and display in a conspicuous location at such produce stand a copy of a valid mobile food dispenser license to engage in a produce merchant business, and, if the produce stand is on the public way, a valid public way use permit issued by the department of business affairs and consumer protection;

(12) To use or to cause to be used any open fire or flame at such produce stand, including, but not limited to, any candle, open-flame heating device, open-flame illuminating device, torch or similar object;

(13) To allow such produce stand to touch, lean against or be affixed to any building, structure, vehicle or other fixture;

(14) To fail to keep the area within 20 feet of such produce stand free of trash;

(15) To fail to keep on the licensee's person, at all times when such produce display stand is being set up, operated or disassembled, proof that the owner of the property on which such produce display stand is located has given the licensee written permission to erect and operate such produce display stand at that specific location at that specific time, or that the licensee has been issued a public way use permit for the operation of a produce stand at that specific location; and

(16) To exceed the scope of any written permission given to the licensee by the owner concerning the operation of such produce stand on the owner's property, or the scope of any public way use permit.

7-38-144 Produce merchants - Record-keeping required.

All persons engaged in a produce merchant business shall keep and maintain a written record identifying, for each produce stand in operation on any given day, the date, time and location of such operation(s). Such written records shall also include a copy of the written permission of the property owner authorizing the sale of produce from the produce stand on such owner's property, as required under subsection (15) of Section 7-38-142. The records required to be kept under this section shall be maintained by the licensee throughout the duration of the license period. Upon request by any authorized city official, the licensee shall make such records immediately available for inspection by such authorized city official.

7-38-146 Designating areas underserved by grocery stores.

The commissioner of housing and economic development shall (1) identify areas underserved by grocery stores using data gathered by the department of housing and economic development, the department of health, the department of business affairs and consumer protection and other appropriate city departments; (2) post and maintain on the city's website a current list or map of such areas, along with a summary statement of the data supporting the designation of such area as an area that lacks adequate access to fresh and healthy food; and (3) promptly notify the commissioner of business affairs and consumer protection in writing of any change to such list or map.

SECTION III. Chapter 10-28 of the Municipal Code of Chicago is hereby amended by adding a new Section 10-28-060, by deleting the language struck through, and by inserting the language underscored, as follows:

10-28-050 Maintenance of stands.

It shall be unlawful for any person to erect, place or maintain in, upon or over any public way or other public place in the city, any fruitstand, shoeshining stand, flower stand, vegetable stand, lunch wagon, table, box, bin or any other arrangement or structure for the display or sale of goods, wares or merchandise, or for the pursuit of any occupation whatsoever unless a permit for the same shall be obtained from the commissioner of business affairs and consumer protection; provided, that the commissioner of business affairs and consumer protection shall issue no such permits except for the purpose of operating a produce stand by a produce merchant, as provided in section 10-28-060 of this chapter, and provided that the commissioner of transportation shall issue no such permits except for the purpose of exhibiting for sale daily newspapers, within such districts as are or have been designated by the city council.

10-28-060 A produce stand on the public way pilot program.

(a) A produce stand on the public way pilot program ("pilot program") is hereby created as provided in this section.

(b) The following definitions shall apply for purposes of this section:

(1) "Commissioner" means the commissioner of business affairs and consumer protection.

- (2) "Department" means the department of business affairs and consumer protection.
- (3) "Produce" has the meaning ascribed to that term in Section 4-8-010 of this Code.
- (4) "Produce stand" has the meaning ascribed to that term in Section 4-8-010 of this Code.

(c) It shall be unlawful for any person to erect or operate any produce stand on the public way without first obtaining a public way use permit from the department as provided herein.

(d) The commissioner is authorized to issue a public way use permit for operating a produce stand at or within 20 feet of the following locations:

- (1) 95th Street and State Street;
- (2) 63rd Street and Halsted Street;
- (3) 71st Street and Jeffery Street;
- (4) 103rd Street and Michigan Avenue;
- (5) 69th Street and State Street;
- (6) Garfield Boulevard and Racine Avenue;
- (7) 16 East 35th Street;
- (8) Ogden Avenue and Pulaski Road
- (9) 43rd Street and State Street;
- (10) 103rd Street and Halsted Street;
- (11) 800 North State street;
- (12) 3355 West Belmont Avenue;
- (13) 943 West Fullerton;
- (14) 1200 North Milwaukee Avenue;
- (15) 2211 North California Avenue;
- (16) 3528 South Leavitt Street;
- (17) 1710 West 18th Street;
- (18) 4620 North Broadway Avenue;
- (19) 63rd Street and Cottage Grove; and
- (20) Navy Pier Bus Turnaround.

(e) An application for a public way use permit for a produce stand shall be made to the department and shall include the following:

- (i) the name and address of the applicant;
- (ii) verification that the applicant is licensed as a mobile food dispenser to engage in a produce merchant business or has applied for such license;
- (iii) the location or proposed location of such produce stand;
- (iv) the types of produce that will be sold from the stand;
- (v) the days and times the stand will be operating;
- (vi) a statement verifying that the applicant will conduct at least 50 percent of his produce merchant business within areas underserved by grocery stores, as defined in section 4-8-010 of this Code;
- (vii) a statement that such permit will be accepted subject to the conditions and provisions thereof and subject to the conditions and provisions of all laws and ordinances affecting the maintenance of such produce stand now or hereafter in effect; and
- (viii) any other information or supporting material required by the commissioner

that is reasonably necessary to determine compliance with this Code and all applicable rules and regulations, including plans, drawings and photographs of the applicant's proposed produce stand.

(f) The commissioner shall forward a copy of an application for a public way use permit for a produce stand to the commissioner of transportation and the commissioner of housing and economic development within three business days after receipt of the application. The commissioner shall not issue a public way use permit for a produce stand unless the commissioner of transportation and the commissioner of housing and economic development approve the application. In addition, the issuance of a public way use permit for the operation of a produce stand shall be dependent on the issuance of a valid mobile food dispenser license to engage in a produce merchant business.

(g) The commissioner shall deny or revoke a public way use permit for operating a produce stand if: (i) the granting of the public way use is not in the best interest of the public, would have a deleterious impact on the neighborhood, or would create a nuisance either on the public way or in the surrounding area; (ii) the design of, or materials used in, the public way use does not comport with the quality or character of the existing streetscape; (iii) the use interferes with or impedes the flow of pedestrian or vehicular traffic, or ingress or egress from any surrounding building, the use of any pole, traffic signs or signals, hydrants, mailboxes or other objects located near the location of the proposed use; or (iv) the applicant makes any false statements, submits any false information or misrepresents any information required under this section.

(h) A public way use permit for operating a produce stand shall be valid from March 1st to and including December 1st of the year of its issuance. The fee for each public way use permit to operate a produce stand shall be \$75.00 per year, and the fee shall not be prorated.

(i) A public way use permit for operating a produce stand shall be subject to all of the following requirements:

- (1) The permit shall be valid only to the person to whom it was issued.
- (2) As a condition of the permit, the permittee shall keep all information current. Any change in required information shall be reported to the department within 30 days after the change.
- (3) As a condition of the permit, the commissioner may enter into a written agreement with the permittee pertaining to the use of the public way for operating a produce stand.
- (4) The issuance of the permit shall be subject to the requirements of section 10-28-015 (e) of this Code.

(j) In addition to all the requirements applicable to a produce merchant, the following requirements shall apply to operating a produce stand on the public way:

- (1) All produce stands located on the public way must leave six feet of public way unobstructed for pedestrian passage.
- (2) Any produce stand operating on the public way shall not be greater than 6.5 feet

long, 3.5 feet wide, and 8 feet high.

(3) No produce stand on the public way shall be located within 200 feet of any business possessing a retail food establishment license, or any fixed business engaged in the business of selling the same produce as sold at the produce stand.

(4) No produce stand on the public way shall be located within 200 feet of another produce stand on the public way.

(k) The commissioner shall have power to adopt rules as may be necessary or useful for the proper administration and enforcement of this pilot program.

(l) This pilot program shall expire on December 31, 2013. Sixty (60) days before the expiration of the pilot program, the commissioner, the commissioner of transportation, the commissioner of housing and economic development, and the commissioner of health shall evaluate the effectiveness of the pilot program and may recommend the continuation of the program with or without changes as may be adopted by ordinance.

10-28-070 Storage of goods on public ways.

Except as otherwise specifically permitted by this Code, No no person shall use any public way for the storage of personal property, goods, wares or merchandise of any kind. Nor shall any person place or cause to be placed in or upon any public way, any barrel, box, hogshead, crate, package or other obstruction of any kind, or permit the same to remain thereon longer than is necessary to convey such article to or from the premises abutting on such sidewalk.

For this purpose of receiving or delivering merchandise, no person shall occupy over four (4) feet of the outer edge of the sidewalk in front of his store or building.

Any person violating any of the provisions of this section shall be subject to a fine of not less than \$50.00 nor more than \$250.00 for each offense.

SECTION IV. Section 17-3-0304 of Title 17 of the Municipal Code, the Chicago Zoning Ordinance, is hereby amended by inserting the language underscored, as follows:

17-3-0304 Indoor/Outdoor Operations.

17-3-0304-A B1, B2, B3, and C1 Districts. All allowed business, service and commercial activities in the B1, B2, B3, and C1 districts must be conducted within *completely enclosed buildings* unless otherwise expressly stated. This requirement does not apply to off-street parking or loading areas, *automated teller machines*, outdoor seating areas or drive-through facilities that are allowed in such districts as a special use, and produce merchants as defined in section 4-8-010 of this Code.

SECTION V. This ordinance shall take full force and effect upon passage and approval.