

# FOOD TRUCKS



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**MAMA & PCLS Annual Summer Conference**

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### Food Service Licensing Details and Frequently Asked Questions

<b>Expires:</b>	Temporary have a 14 day duration and may be renewed April 30 each year. All other durations are set by local health departments.
<b>Fee:</b>	\$28 for Temporary, all other fees set by local health department
<b>Contact:</b>	Rick Dethlefsen, 800-292-3939
<b>Forms:</b>	<ul style="list-style-type: none"><li>Food Service License Application form FI-212 (for use with Local Health Department)</li><li>Temporary Food Service License Application (for Fair concessions via the MDARD)</li></ul>

#### 1. What is a Food Service Establishment?

Category	Definition
Temporary	A temporary food service establishment is a food service establishment which operates at a fixed location for a temporary period of time not to exceed two weeks.
Fixed	A fixed food service establishment is a facility that is a permanent location. This is an operation where food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public.

- [http://www.michigan.gov/mdard/0,4610,7-125-1569\\_16958\\_16977-174008--,00.html](http://www.michigan.gov/mdard/0,4610,7-125-1569_16958_16977-174008--,00.html)

# FOOD LAW (ACT 92 OF 2000)

- Food trucks are defined as “Mobile Food Establishments” under the Food Law

## MCL 289.1109(p)

“Mobile food establishment” means a food establishment operating from a vehicle, including a watercraft, that returns to a mobile food establishment commissary for servicing and maintenance at least once every 24 hours.



# FOOD TRUCKS ARE SUBJECT TO LICENSURE UNDER THE FOOD LAW

- **289.4101 Food establishment license; scope.**  
Sec. 4101.

(1) Except as provided in sections 4102 and 4105, a person shall not operate a food establishment unless licensed by the department as a food establishment.





# COMMISSARY REQUIREMENT

- MCL 289.1109(q)

“Mobile food establishment commissary” means an operation that is capable of servicing a mobile food establishment.

- MCL 289.4103(3) requires Food Trucks to specify in their application for license:
  - (a) The location and dates of the operation.
  - (b) The name and address of the commissary that will service the applicant.
- (4) Within 10 days after a change in the servicing commissary, the mobile food establishment licensee shall submit an affidavit containing the name and address of the new commissary servicing the licensee.
- (5) The local health department shall forward license recommendations to the department. Section 3119(7) does not apply.







# MUNICIPAL RIGHTS TO CONTROL STREETS

- Michigan Constitution Article 7, Sec. 29.

No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village; or to transact local business therein without first obtaining a franchise from the township, city or village.

Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.



# HOME RULE ACT

MCL 117.4i Each city may provide in its charter for 1 or more of the following:

(d) The regulation of trades, occupations, and amusements within city boundaries, if the regulations are not inconsistent with state or federal law, and the prohibition of trades, occupations, and amusements that are detrimental to the health, morals, or welfare of the inhabitants of that city.



## CASES

It has long been settled law that the municipality's power to regulate the use of its thoroughfares for ordinary and usual purposes should be sparingly exercised; but when it comes to the use of streets as a definite means or instrumentality for carrying on a private business, such right may be given or withheld.

People of City of Dearborn v. Dmytro, 280 Mich. 82, 85, 273 N.W. 400, 402 (1937)



## CASES: CONTINUED

- ‘There is no vested or constitutional right to use the public streets as a place of business for private gain; nor is there any natural or inherent rights so to use the streets, whether such business be principally conducted on such streets or whether the use thereof be only incidental but essential to the business. On the contrary, generally the use of the \*41 streets for carrying on business or for the purpose of inducing business is unauthorized. Such use is special and extraordinary, and differs fundamentally and radically from the ordinary use for travel and transportation in the ordinary course of life. The right so to use the streets is a privilege which can be acquired only by permission which the municipality may grant or withhold, and in granting permission for such use the city may prescribe such terms and conditions as it sees fit.’

Fostini v. City of Grand Rapids, 348 Mich. 36, 40–41, 81 N.W.2d 393, 395 (1957)



## CASES: CONTINUED

The Constitution guarantees to citizens the general right to engage in any business which does not harm the public. ...

The principles involved are well settled. The Constitution guarantees to citizens the general right to engage in any business which does not harm the public. This constitutional right to engage in business is subject to the sovereign police power of the State to preserve public health, safety, morals and public welfare. ...

There is a reasonable relationship between the power of the defendant city to preserve the public welfare and exercise reasonable control over its streets and the remedy of deny a license to operate a wrecker and towing service where the applicant exhibits any of the above qualities.

Worthington v. City of Kalamazoo, 71 Mich. App. 646, 650–53, 248 N.W.2d 654, 657 (1976).





# CHALLENGES TO FOOD TRUCK REGULATION

Substantive Due Process – argument that a regulation is unconstitutional if it impermissibly restricts a person's life, liberty or property interest and the principle that every citizen has the right to pursue a trade, occupation, business or profession.



- Courts have repeatedly recognized that protecting a discrete interest group from economic competition is not a legitimate governmental purpose.

Craigmiles v. Giles, 312 F.3d 220, 224 (6th Cir. 2002).



# IN THE NEWS


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## Institute of Justice Files Food Truck Lawsuit Against Chicago

*Burke v. City of Chicago*: Should the city of Chicago be in the business of protecting restaurants from food trucks?



That is the question to be answered by a major lawsuit to be filed tomorrow, Wednesday, November 14, 2012, in Cook County Circuit Court by the [Institute for Justice \(IJ\)](#)—a national public interest law firm—and three Chicago-area food truck entrepreneurs.

Cities nationwide are experiencing the benefits of food trucks. But for years Chicago had not embraced that movement. For example, Chicago did not allow cooking on food trucks and it told food truck entrepreneurs that they must stay more than 200 feet from brick-and-mortar restaurants. So in June 2012, when the city announced it would be revising its vending laws, food fans were excited.

The law that passed in July, however, continues to make it illegal for food trucks to operate within 200 feet of any fixed business that serves food. The fines for violating the 200-foot rule are up to \$2,000—ten times higher than for parking in front of a fire hydrant. Further, the city is forcing food trucks to install GPS tracking devices that broadcast the trucks' every move. According to the *Chicago Tribune*, "the ordinance doesn't serve the needs of the lunch-seeking public. It benefits the brick-and-mortar eateries, whose owners don't want the competition."

The Institute for Justice is the nation's leading legal advocate for the rights of entrepreneurs. For more on the lawsuit and IJ's National Street Vending Initiative, visit [www.ij.org/vending](http://www.ij.org/vending).

## Judge Rules Against Chicago Food Truck Owner in Lawsuit Aimed at Reducing Restrictions

By Regina Waldrup



A Cook County judge on Monday ruled in favor of the city in a years-long lawsuit regarding two provisions of Chicago's food truck laws.

Judge Anna Helen Demacopoulos announced the Chicago food truck ordinance will remain as is, meaning the city's ban on operating a food truck within 200 feet of a restaurant and its requirement that food trucks install GPS



### TRENDING STORIES

- 1 **VIDEO** Man Attacks Officer With Hammer Near Paris' Notre Dame
- 2 **VIDEO** Passenger Stung by Scorpion on Flight to Chicago: CFD
- 3 **VIDEO** George and Amal Clooney Welcome Birth of Twins

## Food-truck operators lose bid to overturn city regulations

CHICAGO 12/05/2016, 06:29pm



## ON THE OTHER HAND

Regulation of City of New Orleans which prohibited vendors' selling of foodstuffs from pushcarts in the Vieux Carre, the French Quarter, with the exceptions of those vendors who had operated the same business within the French Quarter for eight years prior to a specified date rationally furthered purpose of preserving the appearance and customs valued by the French Quarter's residents and attractive to tourists and thus did not deny equal protection; city's decision to gradually eliminate vendors was permissible, as was its conclusion that the two vendors which qualified under the “grandfather clause” had themselves become a part of the character and charm which distinguishes the French Quarter

City of New Orleans v. Dukes, 427 U.S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976).







# ORDINANCE DEVELOPMENT: CONSIDERATIONS

- Specific locations
- Public property / private property
- Conflicts with brick and mortar establishments
- Pedestrian safety
- Trash
- Noise
- Hours of operation
- Licenses / permits
- Fees



## CONSIDERATIONS: CONTINUED

- Interactions with other agencies (i.e. DDA, schools, universities, hospitals)
- Residential areas
- Vending in parks
- Signs
- Sources of power (i.e. generators, public outlets)



# EXAMPLE ORDINANCES

- Kalamazoo

<http://www.kalamazoocity.org/docman/city-of-kalamazoo/city-clerk/135-food-truck-ordinance/file>

- Traverse City

<http://www.traversecitymi.gov/downloads/865.pdf>

- Mount Pleasant

<http://www.mt-pleasant.org/docs/dept/CityClerk/ordinances/Ord982MobileFoodTruck.pdf>



# ADDITIONAL CONSIDERATIONS: FOOD TRUCK COURTS

## *Definition*

- *Mobile Food Vendor Court* means any combination of more than one Mobile Food Vendors (as that term is defined by Chapter 865) operating on a parcel of property or more than one contiguous parcel of property for a period of more than two weeks.

## *Zone*

- Business districts where restaurants would otherwise be allowed.










# STANDARDS

- (1) Mobile Food Vendor Courts shall obtain a land use permit pursuant to the requirements of the Traverse City Zoning Code prior to operation.
  - (2) A “mobile food establishment commissary” as defined by Act 92 of 2000, shall be located on site.
  - (3) Each individual Mobile Food Vendor located in the Mobile Food Vendor Court shall comply with the requirements of Chapter 865 of the City’s ordinances, in addition to any other applicable law or regulation.
  - (4) Wastewater connections and disposal methods shall be shown on the site plan and provided as required by the City Engineer.
  - (5) Potable water connections and distribution methods (such as a back flow preventor) shall be shown on the site plan and provided as required by the City Engineer.
  - (6) The site shall comply with the requirements of Chapter 1068 of the City’s Ordinances governing stormwater run-off control, in addition to any other applicable law or regulation.
  - (7) Permanent toilet facilities shall be provided on site.
  - (8) The site shall comply with the requirements of Chapter 1610 of the City’s Ordinances governing fire prevention, in addition to any other applicable law or regulation.
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# THANK YOU



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