



Legislation Text

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CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Receive the report regarding food trucks and direct staff accordingly

DEPARTMENT: Transportation, Engineering and Development

SUBMITTED BY: Allison Laff, AICP, Deputy Director

BOARD/COMMISSION REVIEW:

Not required.

BACKGROUND:

Under new business at the January 4, 2022 meeting, City Council directed staff to prepare a report regarding food trucks, including a review of existing Code requirements; health department permits; food and beverage tax; best practices from benchmark cities; and input from the Naperville Area Chamber of Commerce and Downtown Naperville Alliance.

Food Truck Types

When discussing food trucks, there are four distinct categories to consider. Each are discussed in detail below.

1. Mobile Vending on Public Property
2. Food Trucks at Special Events
3. Short-Term Food Trucks on Private Property
4. Long-Term Food Trucks on Private Property

1. Mobile Vending on Public Property

The City established a downtown mobile vending program in 2011 that permitted up to 3 *mobile food cart* permits to be issued annually (note: food trucks were prohibited) on specific City owned properties located within the downtown. Based on the limited success of this program and the significant staff time to administer, the downtown mobile vending program was eliminated in 2018 and no new downtown mobile vending permits will be issued moving forward (note: John's Rib House is grandfathered and permitted to continue vending). *Staff supports the decision to eliminate this program and does not recommend that it be reinstated.*

Section 3-7-9 (Food Vendor Regulations) permits mobile food trucks (i.e., ice cream trucks) to vend in the City's right-of-way subject to certain restrictions, including a prohibition against such trucks being parked for periods greater than 15 minutes. Per these regulations, a food vendor must be licensed by the City Clerk, submit a copy of their annual DuPage and Will County health department permits, provide proof of valid commercial liability insurance coverage, and file and pay taxes required by the State of Illinois, including sales tax.

Mobile food trucks vending in the City's right-of-way must obtain an annual license from the City (\$100 cost). In 2021, 3 such licenses were issued.

2. Food Trucks at Special Events

Food trucks are often incorporated into organized special events that are reviewed and approved by the City's Special Events Team. Special events require an application, planning meeting, liquor concept, certificate of insurance and an event permit which is issued once all requirements have been met. While there is no separate permit process for these food trucks, they are inspected by the Fire Marshal during the overall event inspection to ensure that life-safety requirements have been met (i.e., fire extinguishers, cooking procedures, etc.).

Of the approximately 50 special events held in 2021, it is estimated that 10 of these events included food trucks.

3. Short-Term Food Trucks on Private Property

Staff is also aware that food trucks are used on a very short-term basis throughout the City, such as in the parking lot at swim clubs/schools/parks, in residential settings (block parties, parties at individual residences, etc.), and at commercial/institutional properties (Rainbow Cone behind Apple in Downtown Naperville; Happy Lobster at Avenida of Naperville). Most of these trucks vend at the designated location for ½ to 1 day and none seem to exceed a five-day consecutive period at any one location.

The City does not currently permit or regulate short-term food truck activity and therefore cannot quantify the number of short-term food trucks that vend in Naperville annually. However, given the limited ice cream trucks (3 in 2021) and the limited food trucks on private property (5 in 2022), staff believes that the short-term food trucks likely comprise the greatest component of food trucks currently operating in the City.

4. Long-Term Food Trucks on Private Property

There are no existing zoning or permitting regulations pertaining to food trucks operating on private property in the City of Naperville. Mobile food trucks are permitted to locate on privately-owned commercial and industrial property (including the Downtown), subject to the approval of the underlying property owner, and provided that the food truck does not result in any parking or circulation problems at the subject property. If problems arise from a food truck on private property, they would be addressed by the City's Code Enforcement Team on a complaint basis; to date, no parking or circulation complaints resulting from a food truck have been filed with the City.

In 2021, staff was aware of 5 long-term food trucks located on private property: shave ice at 141 Aurora Avenue (parking lot); taco truck at 991 W. Ogden Avenue (Marathon gas station); hot dog cart at 1280 W. Ogden Avenue (Amoco gas station); taco truck at 715 Fort Hill Drive (Menards); and taco truck in Westridge Court (near Portillo's).

Temporary Structure Permits

During prior food truck discussions, it was noted that permits are required for Christmas tree lots and greenhouses, but not food trucks. Christmas tree lots and greenhouses are regulated in accordance with Section 6-2-23 (Outdoor Sales and Storage); these regulations are specific to the sale and

storage of *seasonal merchandise*. Prior to installation, such uses require submittal of a temporary structure permit, which includes an application, site plan, and one inspection (cost \$134).

Permits are required for these uses as they generally utilize a significant portion of the parking lot, impact internal parking lot circulation/close drive-aisles, and require the installation of temporary on-site structures for a 30-60 day period. Because these structures are removed at the end of the approval period, a new permit is required each time such structure is proposed to be installed at a property.

In 2021, 12 temporary structure permits were reviewed and approved.

Food and Beverage Tax

Per the Naperville Municipal Code, food and beverage tax does not apply to food trucks. The code specifically defines Retail Food Facility as “any place at which food items or beverages are served and/or prepared for immediate consumption by a business which provides for on premises consumption of said food or beverages, including, but not limited to, those establishments commonly called an inn, restaurant, eating place, drive-in restaurant, bakery, buffet, cafeteria, cafe, lunch counter, fast food outlet, catering service, coffee shop, diner, sandwich shop, soda fountain, tavern, bar, cocktail lounge, soft drink parlor, ice cream parlor, tearoom, delicatessen, movie theater, hotel, motel or club...”

Because food trucks do not provide permanent seating (and therefore, food is not consumed on premises), food and beverage taxes are not required (note: a carry-out only restaurant located in a brick and mortar restaurant also does not currently pay Naperville food and beverage taxes). Finance is currently evaluating several components of the existing Food & Beverage Tax ordinance with recommendations coming to the City Council in the second quarter of 2022. This review includes consideration of eliminating the requirement of on premises consumption of food and beverages. If this change was made, carry out only establishments as well as food trucks would be subject to food and beverage taxes. If this change is made, staff would make a recommendation on what food trucks would be subject to the tax (mobile vending, short term, long term, etc).

It should be noted that food trucks are required to pay Illinois sales tax and home rule sales tax (where applicable); however, the location at which sales tax is reported appears to be inconsistent. Staff identified instances of food trucks based in other towns reporting sales tax in Naperville but found no records from some trucks known to be operating in Naperville. It is not uncommon for businesses to report sales to the State using the location that the business is based out of. For example, Aurora may receive the tax revenue from a food truck that is based in Aurora but vends in Naperville on occasion.

Health Department Approval

Staff contacted the DuPage County Health Department to better understand their permitting requirements for food trucks. A permit from the County is required for any food truck that intends to vend in DuPage County. The permit fee ranges from \$164 - \$438 depending on the type of food that is being served (i.e., food requiring intensive preparation requires greater review, thus resulting in a higher permit fee). The food truck is also inspected following issuance of the permit.

Per the representative at DuPage County, the County has issued numerous permits for food trucks

who vend in Naperville. They were not aware of any existing food trucks operating in Naperville without their required permit or inspection.

While staff did not speak to a Will County Health Department representative, it is expected that similar permitting requirements exist.

Chamber and DNA Feedback

Attached is an email from the Naperville Area Chamber of Commerce (Chamber) dated February 15, 2022 and a letter from the Downtown Naperville Alliance (DNA) dated February 4, 2022 in which each provides their respective positions regarding food trucks in Naperville. The Chamber and DNA's recommendations are also included as options under "Potential Regulations" below.

DISCUSSION:

During the discussion of food trucks under new business on January 4, 2022, Council's primary concerns were (1) ensuring that each food truck is paying the required Naperville food and beverage taxes, (2) ensuring that each food truck has the required health department permits, and (3) permit equity (i.e., permits are required for seasonal sales but not food trucks).

Staff Recommendation

Staff notes the following with respect to Council's food truck concerns:

- (1) Per the current ordinance, Naperville food and beverage taxes cannot be collected for food trucks; however, this ordinance may be amended. In the event that the ordinance is amended to require food trucks to pay food and beverage taxes, staff does not believe that a permit process is needed to ensure that the required taxes are collected. This is particularly true if the taxes are primarily intended for long-term food trucks (only 5 citywide) which makes tracking and collection fairly easy; and
- (2) Adequate County Health Department processes appear to be in place to ensure that required permits are being issued for Naperville food trucks; and
- (3) While permits are not currently being required for long-term food trucks, these trucks do not appear to exhibit the same site characteristics or site impacts as seasonal sales. Additionally, there are minimal such food trucks in the City and those that are operational have no noted code violations.

Licenses are also not being required for short-term food trucks (as are required for ice-cream trucks). The short-term food trucks likely comprise a much greater portion of the food trucks that are vending in Naperville today.

Based on the above findings, staff does not believe that additional permit regulations are needed at this time. However, should any of the above items change, permit regulations could be revisited at a future date.

Regulation Options

Notwithstanding staff's recommendation above, if Council determines that additional food truck regulations are needed, staff has identified the following potential options for Council consideration (note: Council may select one or more of the options provided below):

A. Require an annual license for any short-term food truck vending on private property.

Similar to ice-cream trucks, this license would be applicable to the food truck/vendor and not be location specific. The license process would permit the City to verify that appropriate health department permits have been obtained. An annual license fee of \$100 (consistent with ice-cream trucks) would be charged.

If such permit is required, the Council should provide direction as to whether commercial liability insurance coverage should be required in conjunction with the permit requirement. Such insurance is currently required for (1) ice cream trucks, likely because they are vending on public property (i.e., city streets) and (2) liquor licensees based on state requirements and a certain level of public risk resulting from City issuing these licenses. Outside of above, the City does not currently require either business licenses or insurance for businesses located on private property.

If an annual license is implemented, this requirement would be posted online and provided to any individual who contacts the City for information. Compliance with the established regulations would then be enforced on a complaint basis and fines would be issued for violations. Staff anticipates that there could be a significant level of non-compliance purely based on the vendor's lack of awareness that this requirement exists.

Outcome of License Requirement: confirmation of required health department permit; permit equity (ice cream trucks)

B. Require a permit for any long-term food truck vending on private property.

Staff would define a food truck as "long-term" if located on commercial or industrial private property for *5 consecutive days or greater*. For such food trucks, a permit would be required for each property that the food truck is requesting to vend at long-term. The approved permit would be issued to the specific vendor on a specific property.

The cost of the permit would be \$134 and would include an application, site plan review, confirmation of health department permit, and one inspection. The site plan would be reviewed only to confirm that the food truck does not result in on-site parking or circulation issues. Unlike the temporary structure permits, the food truck permit would not need to be renewed annually (i.e., the permit will be valid for as long as the food truck remains at the property it is approved for, provided there are no site plan changes).

Outcome of Permit Requirement: confirmation of required health department permit; permit equity (seasonal sales)

C. Establish zoning regulations for long-term food trucks on private property.

Staff reviewed food truck requirements for Naperville's benchmark communities and surrounding communities in Illinois. The majority of ordinances provide regulations for food trucks vending from an on-street parking space (prohibited in Naperville). While some ordinances speak to permitting requirements for food trucks located on private property, most of those ordinances do not provide any zoning regulations specific to food trucks on private property.

If Council feels that additional zoning regulations are needed for long-term food trucks located on private property, potential zoning regulations (which would be enforced through the permit review process) could include:

- Specific zoning districts in which food trucks would be permitted/prohibited
- Minimum lot size to qualify for a food truck
- Maximum number of food trucks permitted on the property
- Setback requirements
- Minimum parking spaces required for food truck (in addition to minimum parking required for underlying uses on property)
- Signage limitations
- Requirement that food truck is removed at the end of each business day
- Outdoor seating requirements
- Trash and recycling receptacle requirements
- Parking surface requirements (i.e., parking prohibited on dirt, gravel, or grass)

If Council finds that long-term food trucks on private property are not an appropriate use, an ordinance can also be written to prohibit such uses outright.

Any new zoning regulations proposed will require a public hearing before the Planning and Zoning Commission followed by City Council review and approval. Establishment of these zoning regulations will likely take 3-5 months.

Outcome of New Zoning Regulations: limit long-term food trucks on private property

D. DNA Recommendation: Limit Mobile Vendors (Food and Merchandise) on Private Property in Downtown Naperville.

DNA is requesting that mobile vending licenses in Downtown Naperville be restricted to special events and awarded on a finite basis - perhaps 3 business days per year. Note, if these regulations are enacted as proposed by DNA, SnoProblems' current vending operations at 141 Aurora Avenue would be limited to 3 business days per year.

Outcome of DNA Recommendation: limit food trucks in Downtown Naperville

E. Chamber Recommendation: Require Permits for Long-Term Non-Naperville Food Trucks.

The Chamber is requesting a special permitting requirement for those food truck/mobile vendors who are not a Naperville business, or who do not pay Naperville food and beverage tax, and who plan to be in Naperville for more than four days in any calendar year. The Chamber finds that this creates a more fair and competitive taxation among Naperville's business community members.

If supported, staff believes that the Chamber's recommendations would be implemented through a version of the "annual license for any short-term food truck vending on private property", as discussed above. Staff anticipates that implementation of the Chamber's recommendation will be logistically difficult in that (1) staff will need to determine which vendors are/are not required to apply for this license based on where their business is located and whether they are currently paying Naperville food and beverage tax, and (2) because the requirement is based on the number of times a truck vends in Naperville (not property specific) within a *calendar year*, staff will need to track each business's vending activity each year (i.e., a license is not required for vending days 1-3, but will be required once a truck vends 4+ days).

Because these vendors would not be classified as "long-term" (described above to include a vendor

located at a *specific property for 5 or more consecutive days*), staff believes that the number of licenses required for the Chamber's option could be numerous and that gaining vendor compliance with these requirements could be difficult.

Outcome of Chamber Recommendation: limit non-Naperville food trucks; competitive taxation

FISCAL IMPACT:

Potential collection of additional permit fees.