

Local Law No. 3 of 2023

Village of Wolcott, NY

Chapter 73 - Food Vendors

§ 73-1. Definitions.

As used in this chapter, the following terms shall have the following meanings as indicated:

FOOD

Any raw, cooked, frozen or processed edible substance or beverage, including, but not limited to, ice cream, ice cream products or frozen desserts.

FOOD VENDOR

A person, general or limited partnership, corporation or limited-liability company or other entity recognized by law that hawks, peddles, sells or offers for sale food at retail in any public space. This definition shall include a mobile food vendor.

MOBILE FOOD VENDOR

A person, general or limited partnership, corporation or limited-liability company or other entity recognized by law that hawks, peddles, sells or offers for sale food at retail in any public space.

MOBILE VENDOR STAND

Any vehicle, trailer or stand required to be registered with the New York State Department of Motor Vehicles, designed to be operated on a road, street or public highway and not permanently attached to the ground, that is used by a mobile food vendor for displaying, keeping or storing any food or article required by a mobile vendor while acting as such vendor.

PARK All Village-owned parks.

PUBLIC SPACE

All publicly owned roads, streets, public highways, sidewalks, parks, marinas, waterfronts, plazas, walks, parking lots and publicly owned lands.

PUSHCART

Any wheeled vehicle or device used by a food vendor, other than a motor vehicle or trailer, which may be moved with or without the assistance of a motor and which does not require registration by the New York State Department of Motor Vehicles.

STAND

A movable, portable or collapsible structure, framework, device, container or other contrivance used by a food vendor for displaying, keeping or storing any food or article required by the food vendor while acting as such food vendor and which does not require registration by the New York State Department of Motor Vehicles.

TENT

A portable shelter made of cloth, plastic or other covering material supported by one or more poles and stretched tight and/or supported or suspended by one or more ropes, poles, rods, or loops, including unattached and/or suspended structures and structures attached to the ground by cords or loops attached to pegs driven into the ground.

VEHICLE

A motor vehicle or trailer, as defined by the Vehicle and Traffic Law of the State of New York.

VEND

To hawk, peddle, sell or offer to sell food, at retail, in a public space, park or from a mobile vendor stand, delivered upon consummation of purchase.

VENDOR

Food vendor and/or mobile food vendor.

VILLAGE BOARD

Village of Wolcott Board of Trustees.

§ 73-2. Purpose.

The purpose of this chapter is to allow the Village of Wolcott to regulate food vendors to ensure that food vendors operating in public space, private property, commercial property, or who intend to operate at any events in the Village of Wolcott are safe to the public including at its festivals and public events, do so in a safe and orderly manner in approved locations, and in a manner which promotes the health and safety of the residents of, and visitors to the Village of Wolcott.

§ 73-3. Permit required; transferability.

- A. Every food vendor, before he or she may vend within the limits of the Village of Wolcott, must first lawfully obtain, pay for, and have in full force and effect, a food vendor's permit obtained in accordance with the provisions of this chapter.
- B. Such license shall not be transferable or assignable by or from the food vendor to whom it is issued.
- C. The requirement to obtain a license under Chapter 112, Peddling and Soliciting, shall not apply to prepared food truck, trailer or cart vendors.

§ 73-4. Permit application to Village Clerk.

Application for a permit hereunder shall be made to the Office of the Village Clerk of the Village of Wolcott by the food vendor, on forms to be furnished by the Village Clerk. The applicant shall provide its name, address and telephone contact number, and the applicant shall provide such other appropriate health and safety information as the Village Clerk may reasonably require. The applicant shall notify the Village of Wolcott Clerk of any changes in such information during the permit period and shall provide such changed information to the Village Clerk.

§ 73-5. Requirements for issuance of permit.

- A. A 10 day notice for permit is required to the Village clerk prior to request date for the initial permit. 24 hours required after the initial issuance. Permits will be issued during normal Village Clerk operating hours. The permit shall only be issued by the Village Clerk after the applicant has complied with all of the following:
- (1) The applicant has obtained a statement from the Commissioner of the New York State Department of Health advising that the applicant meets the requirements of the New York State Department of Health for the vending of food.
 - (2) The applicant has obtained a statement from the Village of Wolcott Police Department that the applicant has not been convicted of a crime related to conduct that would make the applicant unfit to be a food vendor, pursuant to NYS Corrections Law Article 23-A.
 - (3) The applicant has submitted a statement signed by the applicant agreeing to indemnify and hold harmless the Village of Wolcott, its agents, officers and employees thereof for any and all claims, suits or actions of any name, nature or description brought against the Village of Wolcott, its officers, employees or agents on account of injuries, death or damages to persons or property received, sustained, or alleged to be received or sustained by any person or persons arising out of the permit issued hereunder or from any permit or permission granted to the food vendor to operate within the limits of the Village of Wolcott.
 - (4) The applicant has submitted proof of a general liability insurance policy, including products liability and bodily and property damage coverage, in a form acceptable to the Village of Wolcott and the Village of Wolcott Attorney, with coverage in effect for the duration of the permit, insuring the applicant and naming the Village of Wolcott as an additional insured under such coverage, such insurance shall not be terminated or cancelled without 30 days written notice to the Village of Wolcott Clerk.

- (5) The applicant has submitted annual written approval from the Fire Code or Code Enforcement Officer in the event that the applicant uses a propane tank while operating as a food vendor, the tank meets all applicable safety standards for propane tanks and use thereof in public space.
 - (6) The applicant has submitted proof to the Village of Wolcott Clerk that the New York State Department of Taxation and Finance has issued to the applicant a certificate of authority to the applicant for the collection of sales tax in connection with the applicant's vending operation.
- B. No such permit shall be granted to or renewed for an applicant who is in violation of any Village of Wolcott code, ordinance or local law ("hereinafter violations") or who owes property taxes, water or sewer fees, special assessments, fines for violations or Village ordinances or any other fees or past due monies or any name or nature owed to the Village of Wolcott ("hereinafter unpaid monies").
- (1) The applicant shall have the burden of providing proof, in a form acceptable to the Department, that there are no such violations or unpaid monies.
 - (2) In the event that the applicant has accrued violations or unpaid monies, such permit or renewal thereof shall be denied regardless of whether such violations or unpaid monies relate to a parcel of real property for which the application is made or another parcel owned by the applicant or are personal to the applicant.
 - (3) In the event that the applicant has accrued violations or unpaid monies, such permit or renewal thereof shall be denied regardless of whether such violations or unpaid monies occurred or accrued before the effective date of this chapter.
 - (4) Such permit, once granted, shall be revoked in the event that the applicant accrues violations or unpaid monies, or violations or unpaid monies are discovered, after the permit is granted. The revocation shall take effect five business days after receipt by the permit holder of notice from the Village of Wolcott of the pending revocation. Upon such revocation, all permitted activities and privileges shall immediately cease.
 - (5) No application fees shall be refunded upon revocation of the permit.
 - (6) The applicant must reapply for the issuance of such revoked permit by submitting a new application and paying all necessary application fees, and any such permitted activities or privileges may only be resumed once a new permit has been granted.
 - (7) All requirements set forth herein shall also apply to nonperson entities, and such permit or renewal thereof shall be denied to an entity, or revoked, if a person with a substantial interest in such entity owes such unpaid monies or has accrued such violations. A "person with a substantial interest" shall mean an ownership interest of more than 10% of, membership on the governing board of, holding an office in, or holding the ability to cast or control more than 10% of the votes in, such entity.

- C. **Any person denied a permit under this section, or having been issued a permit it has been revoked, shall have the right to file an appeal to the Village Board for reconsideration of the denial or revocation. Such appeal shall be filed on or before the 30th day after the denial or revocation was made, otherwise the denial or revocation will continue. The Village Board shall have the authority to reverse any determination leading to the denial or revocation of a permit under this section provided the applicant or permit holder presents proof sufficient to rebut the denial or revocation.**

§73-6 Separate permits required.

A separate permit shall be required for each vehicle, pushcart, stand or vendor selling without vehicle, pushcart or stand, and for each location where the vendor operates.

§ 73-7 Permit fees.

The fees for permits issued under this chapter shall be set by the Village Board and may be changed at the discretion of the Village Board. The lowest permit fee shall be set for vendors without a tent or propane tank. The Village Board may set higher fees for vendors with propane tanks or tents, and a higher fee for vendors with both a propane tank and a tent or mobile vendor stand. The Village Board may also set fees based upon the desirability of the location or the number of people likely to attend the event. There will be no fee for Food Vendors hired for home or personal dwelling use.

§ 73-8 Duration of permit.

- A. **Permits. There shall be three types of permits available to be issued to applicants: annual, weekly or for a single day. Permit duration and Fee scale will be determined by the Village Board through a Resolution process.**

1. Annual Permit. Annual mobile food vendor permits shall automatically expire on December 31 each year such a permit is issued.
2. Weekly Permit. Weekly Permits issued for 7 days in duration shall be valid only for the dates for which the permit is issued, shall run consecutively and shall expire at the end of the 7th day for which it was issued.
3. Single-Day Permit. Permits issued for one day in duration shall be valid only for the date for which the permit is issued and shall expire at the end of the day on the date for which it was issued.

- B. Permit fees shall be nonrefundable and permits are nontransferable.

§ 73-9. Display of permit.

While vending within the limits of the Village of Wolcott, every food vendor and mobile food vendor shall affix the original permit to the vendor's vehicle, pushcart, stand, tent, mobile vendor stand or park concession stand in a conspicuous place where the permit may be reasonably visible to patrons, law enforcement officials and fire and safety personnel during the term of the said permit.

§ 73-10. Restrictions.

A. No food vendor shall conduct business at the following locations:

- (1) Within 10 feet of a sidewalk corner.
- (2) Within the extension of a door or entrance to the curb and perpendicular to said doorway or entrance a distance of 10 feet.
- (3) Within the extension of a doorway or entrance to the curb and perpendicular to the said extension a distance of 100 feet whenever said doorway or entrance is to a diner, restaurant, bakery, or other similar establishment for the consumption of food on site or for the sale of processed, prepared, baked, or otherwise cooked food situated on the main floor of said building.
- (4) At locations not approved by the Village Board for vending.
- (5) At a location other than that for which the vendor has been issued a permit to vend.
- (6) At the Farmer's Market, parades, or other Village of Wolcott event during such event, unless the vendor has obtained specific permission to do so from the Village Board and such permission appears in writing in the vendor's permit.

B. All vendors conducting business from a vehicle, pushcart, stand, tent or mobile vendor stand must regularly pick up all papers, cartons, rubbish or any debris or trash in any form which is deposited within a radius of 25 feet from the vehicle, pushcart, stand, tent or mobile vendor stand which has not been properly disposed of in an appropriate trash container.

C. Each vendor conducting business at a public place, private property, commercial place or a park shall maintain a suitable waste container adjacent to the vendor's vehicle, pushcart, stand, tent or mobile vendor stand for the placement of litter by customers and shall duly dispose of said litter.

D. No vehicle, pushcart, stand, tent or mobile vendor stand that is used by a licensed food vendor shall occupy more than 200 square feet of an area except for greater areas which may be approved by the Village Board.

E. No vendor shall carry on the vendor's business in a loud or boisterous manner, advertise wares by calling or shouting, or advertise wares by ringing any gong or bell or playing or causing to be played any mechanical or electrical musical sound device while the vendor's vehicle, pushcart, stand, tent or mobile vendor stand is in a stationary position.

- F. No food vendor shall ring any gong or bell or cause to be played any mechanical or electrical musical sound device to advertise wares or to aid in the vendor's business in any street, lane or alley or upon any sidewalk or upon any plaza, steps or platform immediately adjoining any street, lane or alley in the Village between 9:30 p.m. and 9:00 a.m. of the following day.
- G. All vendors shall obey the direction of any Village employee, acting within the scope of his or her employment and at the request of the Village Clerk, the Code Enforcement Officer or a police officer, that a vendor shall temporarily relocate to another location, delay setting up or opening for business or temporarily suspend operations, in order to accommodate a parade, funeral or other activity or Village sponsored event as directed by such employee or police officer. Failure to follow and obey the direction of said Village employee or police officer shall constitute grounds for the immediate suspension of the vendor's permit for a period of seven days, upon reasonable notice. Vendors further shall not operate during the regularly scheduled Farmer's Market on that part allocated to the Farmer's Market on the streets of the Village of Wolcott.
- H. No vendor shall attach or have attached any flashing or revolving light or lights on a vehicle used in aid of the vendor's business, except those permitted by law.
- I. No vendor shall sell or serve alcoholic beverages as part of his or her operation as a vendor unless approved by NYS SLA For example One-day beer and wine, cider permit or Catering permit and meets requirement's as follows:
- (1) The permittee shall only sell and serve alcoholic beverages on its licensed premises.
 - (2) The container clearly displays a logo or some other mark that is unique to the vendor operation.
 - (3) The container is not comprised of glass.
 - (4) Displays, posted "Drink Responsibly - Be 21."
 - (5) The container shall be clear and shall not hold more than 16 fluid ounces
- J. Permits will be issued for specific locations as set forth on a map designating such locations, which shall be entitled "Food Vending Locations Map," which map shall be approved by the Village Board with the advice of the Village Attorney, the Fire Chief and the Code Enforcement. The Village of Wolcott may change the locations approved for vending from time to time as it deems appropriate.
- (1) Designated Village owned property is Wolcott Falls Park. Not to exceed two (2) Food Vendors at one time. Monday – Thursday only.
- K. Mobile food vendors must vend their food from the mobile vendor stand. No mobile food vendor may vend from and/or store its equipment, food or other articles on the sidewalk or road or street next to the mobile vendor stand.

- L. Food vendors must vend their food from their pushcart, stand or park concession stand. No food vendor may vend from and/or store its equipment, food or other articles on the sidewalk or road or street next to the pushcart, stand or park concession stand.
- M. Food vendors and mobile food vendors must move their vehicle, pushcart, stand, tent or mobile vendor stand from its location each and every night at 5:00 p.m., or by one (1) hour after the conclusion of the event at which the vendor is selling food, whichever is later, and such vendor or mobile food vendor shall not be permitted to store its vehicle, pushcart, stand, equipment, food or other articles on the sidewalk or road overnight.
- N. Vendors and mobile food vendors must at all times comply with all applicable state and local traffic laws and codes and other applicable federal, state and local laws.
- O. Vendors may apply to the Village Board for permission to extend operating hours past 5:00 p.m. or before 9:30 a.m. and may only operate during extended hours if approved by the Village Board.
- P. The Village of Wolcott Clerk shall mark each permit with the permitted hours of operation.
- Q. If more applications are submitted for a specific location than there are spaces allocated by the Village Board, then the Village Clerk shall hold a lottery to choose which applications shall be accepted.
- R. Use of generators shall be allowed if approved by the Village Board as to size, placement and amount of noise created.
- S. Any vendor aggrieved by any determinations made by the Village of Wolcott pursuant to this section shall have a right to request a hearing, to be conducted as an administrative hearing, and presided over by the Attorney for the Village of Wolcott who shall report the results of the hearing to the Village Board with recommendations on the appropriate resolution of the dispute. The Village Board shall make the final determination on the dispute.

§ 73-11. Revocation of permit.

- A. Any permit issued to the provisions of this chapter may be revoked by the Village of Wolcott Clerk, upon reasonable notice and hearing to be conducted by the Village of Wolcott Attorney, for any one of the following causes:
 - (1) The Village of Wolcott Clerk has been advised by the Code Enforcement Department that such vendor has violated any provisions of any New York State or Wayne County health code law, rule or regulation.
 - (2) The vendor made a false or fraudulent statement in the application for the permit.
 - (3) The vendor makes a false or fraudulent statement in connection with the selling of any food item.
 - (4) The vendor violates any provision of this chapter.

B. There shall be no reimbursement, adjustment or proration of fees for a revoked permit.

§ 73-12. Penalties for offenses.

Any person, vendor or entity who violates any provisions of this chapter shall be guilty of an offense and shall, upon conviction in Village of Wolcott Court, be subject to a fine of not less than \$100 nor more than \$250 for the first offense, not less than \$250 nor more than \$500 for the second offense, not less than \$500 nor more than \$1,000 for the third offense and \$1,000 for each offense thereafter.

§ 74-13 When effective.

This chapter shall take effect immediately upon filing with the Secretary of State.