



# CITY OF CONCORD

## REPORT TO THE MAYOR AND CITY COUNCIL

**FROM:** Carlos P. Baía  
**DATE:** March 26, 2015  
**SUBJECT:** Peddlers on Public Property

### **Recommendation**

Accept this report analyzing the fee structure applied to peddlers on public property.

### **Background**

At its February 2015 meeting, City Council requested that staff review the current practice of assessing fees for peddlers operating on public property, specifically at the Farmers' Market and the Arena.

The City's Code of Ordinances defines "peddler" as:

[A]ny person, whether a resident of the City of Concord or not, traveling by foot, wagon, automotive vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying, or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, stand, automotive vehicle, railroad car, or other vehicle or conveyance and includes one who solicits orders and as a separate transaction makes deliveries to purchasers. The word "peddler" shall include "hawker," "vendor," and "huckster".

For the purposes of this report, "peddler" and "vendor" may be used interchangeably.

The current Code of Ordinances provides for the charging of a fee for an individual or corporate entity to peddle from public property within the city limits. Those fees are outlined as follows:

Article 1-5-2; Chapter 15-8-18 [public property sections only]:

*Annual fee to vend from a motor vehicle, stand, table, or similar support, at a fixed location on public property within the Central Business District:*

*Where a single application is received for a location .....1,553.90*

*Where more than one application is received for the same location, the Licensing Officer shall, after notification, accept sealed bids for a license to operate at the contested location and award a license based upon the highest bid submitted above the minimum fee of .....1,553.90*

*Annual fee to vend from a motor vehicle, stand, table, or similar support, at a fixed location on public property outside the Central Business District:*

*Where a single application is received for a location .....642.65*

*Where more than one application is received for the same location, the Licensing Officer shall, after notification, accept sealed bids for a license to operate at the contested location and award a license based upon the highest bid submitted above the minimum fee of .....642.65*

*Fee per day for temporary vendor's license on public property from a fixed location pursuant to [Section 15-8-16](#), Street Fairs .....52.25*

*Fee for license, pursuant to RSA 31:100 and [Section 15-8-16](#), to conduct a street fair or other community event, which involves the sale of merchandise by retailers or involves other commercial activity .....642.65*

In addition, peddlers that sell food must secure a food service license as defined below:

*Article 1-5-2; Chapter 13-5-5: Class III, Food service establishments, seating capacity less than [25](#); food service establishments with take-out service and no seating; drive-in movie theatres; all grocery operations with food preparation; hot dog and sandwich shops; service and fraternal clubs; cafeterias, bakeries, and commissaries; caterers, catering services, and mobile food operators .....209.10*

## **Discussion**

The central question that was raised at the February Council meeting was whether the current fee structure is equitable both to the peddlers and to the “bricks and mortar” merchants that may be in competition with such peddlers.

The first step to this analysis was to determine what fees other communities in New Hampshire assess for similar peddlers on public property.

**Farmers’ Markets**

*Market-Assessed Fee*

The chart below entitled “Farmers’ Markets on Public Lands—Fees By Municipality” illustrates how communities assess fees for Farmers’ Markets on public property. As the chart outlines, some municipalities impose a fee to each individual vendor while others charge the umbrella market association. Concord has historically opted for the latter and this practice is reflected in our ordinance.

FARMERS' MARKET ON PUBLIC LANDS--FEES BY MUNICIPALITY					
Municipality	Location	Day Rate	Weekly	Monthly	Yearly Rate
Concord	Capitol St.				\$1,553.90/Market \$209.10 Food Svc. Lic. /Mkt
Manchester	Concord & Pine Streets		\$300/1st day and \$50/week/Mkt.		\$200 Health Department Fee
Nashua	Main St. Bridge	\$10.00	\$25.00		\$125/10X10 space \$200/10X20 space \$35 Health Dept. Fee/Vendor
Laconia	Municipal Pkg. Lot				\$150/Market
Portsmouth	City Hall				\$140 Health Dept. Fee/Vendor
Wolfeboro	Clark Park	No charge	No charge	No charge	No charge
Hanover	The Green	No charge	No charge	No charge	No charge
New London	Town Common				\$250/Market
Newport	Town Common		\$1/Vendor		

In terms of communities that charge per market, Concord’s peddler’s fee of \$1553.90 is the highest in the sample. Some municipalities, such as Hanover and Wolfeboro, do not charge at all. Laconia’s market fee is less than 10% of the Concord fee. Manchester applies a \$300 1<sup>st</sup> day charge and then assesses \$50 per week to the market. For comparison, assuming a 25 week season, this would generate \$1,550 (almost equal to what Concord charges).

Municipalities with health inspectors charge an additional fee to address vendors with food products. Manchester assesses a \$200 health fee per market. Concord is slightly more at \$209.10.

*Vendor-Assessed Fees*

Newport, Nashua, and Portsmouth assess fees to each individual peddler in a farmers’ market. Newport’s fees are nominal at \$1 per vendor per week. Nashua’s charges \$10 per day; \$25 per week or \$125 to \$200 for a season depending on booth size. Nashua also assesses a \$35/vendor health fee. According to Nashua officials, their community’s market averages 5 vendors resulting in a total likely not having exceeded \$1,000. Portsmouth simply charges a health fee at \$140/vendor.

*Markets on private property*

Although not a focus of this report, Salem, Amherst and Concord (of the sample) also have markets on private property. In Amherst, the Bedford Fields market is not assessed a fee by the municipality. In Salem, the Lake Street Garden Center market is assessed a \$150 health department fee for the entire market.

Concord assesses a \$642.65 fee for outdoor markets on private property as well as a \$209.10 food service license. These markets include the Steeplegate Mall parking lot and the Rolfe property in Penacook. The Cole Gardens winter farmers’ market is only charged the food service license fee as it is held indoors.

**Peddlers at the Everett Arena**

As a special revenue fund, the Arena charges fees for use of its parking lot *in addition* to the peddler fees assessed by the Code Administration division previously cited in this report. Those fees are also approved by City Council. Under the current fee structure, Sanders Fish Market pays the Arena \$1,925 annually for access to the lot 12 months of the year. The Fruit Center farm stand pays a 6 month fee of \$995. The hot dog vendor also pays the same 6 month rate. The Christmas tree farmer is charged a flat \$4,000 for the season plus any additional bid amount should there be more than one party interested in selling the same goods. The total fee burden is as follows:

<u>User</u>	<u>Fish Mkt.</u>	<u>Farmstand</u>	<u>Hot Dog Vendor</u>	<u>Tree Farm</u>
Arena Fee	\$1,925.00	\$995.00	\$995.00	\$4,000.00
City Peddler Fee	\$ 642.65	\$642.65	\$642.65	\$ 642.65
Food Service License	\$ 209.10	\$209.10	\$209.10	
Bid Premium	As applicable	As applicable	As applicable	As applicable
<b>Total Fees</b>	<b>\$2,776.75</b>	<b>\$1,846.75</b>	<b>\$1,846.75</b>	<b>\$4,642.65</b>

*Equity with “Bricks and Mortar” Merchants*

Answering the question of whether the current fee structure is equitable to “bricks and mortar” merchants is challenging as there are public policy implications with allowing street peddlers, particularly farmers’ markets. The Capitol Street Farmers’ Market is usually the largest draw of visitors to downtown on most Saturday mornings. Anecdotal evidence suggests that many of those visitors end up frequenting other downtown businesses adding to the overall economic vibrancy of the local economy.

Nonetheless, to provide a reasonable analysis, an attempt was made to “equalize” the cost for a “bricks and mortar” merchant and a peddler. The resulting analysis is shown in the following chart.

Vendor	Space	Hours Per Week & Total Weeks	Fee or Rent per comparable hour	Amenities Included in Fee or Rent	Notes
Premium Booth Farmers' Mkt Peddler (10'X20')	200 s.f.	4 hours <i>(25 weeks)</i>	\$29/week or <b>\$7.25 per hour</b> paid to the Farmers' Market Association	Open air, unheated space, city fees, market advertising, insurance.	
Typical Bricks and Mortar Downtown Merchant	1,500 s.f.	54 hours <i>(52 weeks)</i>	\$26,325/2,808 hours = <b>\$9.38 per hour</b>	Enclosed and secured space, common area expenses (taxes, insurance, maintenance)	Based on 2015 average asking gross retail rent of \$17.55/s.f.
Fishmonger	200 s.f.	6 hours <i>(52 weeks)</i>	\$2,776.75/312 hours = <b>\$8.90 per hour</b>	Open air, unconditioned space, parking	Based on anticipated maximum utilization. Maximum utilization is not likely due to Arena events on weekends
Farm Stand	200 s.f.	36 hours <i>(26 weeks)</i>	\$1,846.75/936 hours = <b>\$1.97 per hour</b>	Open air, unconditioned space, parking	Based on anticipated maximum utilization. Maximum utilization is not likely due to Arena events on weekends
Hot Dog Stand	200 s.f.	15 hours <i>(26 weeks)</i>	\$1,846.75/390 = <b>\$4.74 per hour</b>	Open air, unconditioned space, parking	Based on anticipated maximum utilization.

A review of the chart appears to show that peddlers in the Farmers' Market are not capturing a significant financial windfall over "bricks and mortar" merchants. While they might be paying a lower rate, the peddlers are also at the whim of the elements.

Vendors at the Arena property fall on the lower end of the "hourly rate" but it is important to remember that all of these "hourly rates" are subject to the hours that each peddler or merchant wishes to put into its business. The permit fees are flat so if a vendor maximizes the time he/she has under the permit to peddle their products, their hourly cost (based on the permit fee alone) will be lower. This is particularly evident with the farm stand. The same diminishing cost would apply to the bricks and mortar merchant if one solely views this in terms of their fixed rent.

If Council finds that the flat fee approach no longer meets its public policy goals, it might wish to explore a utilization approach where a fee might be graduated based on more discreet units of time. For example, there could be one charge for utilization up to four hours per week; another charge for those selling products from 4 to 10 hours and so on. This would require more analysis and a higher level of monitoring by City staff to ensure compliance.

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<sup>i</sup> This section of the ordinance is shown here as it should be upon the correction to the scrivener's error noted in the Deputy City Manager's March 26<sup>th</sup> Report to Council entitled "Correction to License Fee Ordinance for Peddlers, Section 15-8-18."