

Chapter 194
FOOD STORES

- § 194-1. Definitions.**
- § 194-2. License required.**
- § 194-3. Referral and approval of license application.**
- § 194-4. Operation of business.**
- § 194-5. Transferability and expiration of license.**
- § 194-6. Complaints.**
- § 194-7. Revocation, suspension or nonrenewal of license.**
- § 194-7.1. Procedure governing license renewals.**
- § 194-8. Closure for operation without license.**
- § 194-9. Check-cashing service notification.**

[HISTORY: Adopted by the Common Council of the City of Buffalo 6-25-2002, effective 7-8-2002; amended in its entirety 4-15-2008, effective 4-25-2008. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

- Alcoholic beverages — See Ch. 69.
- Bakers and confectioners — See Ch. 88.
- Fees — See Ch. 175.
- Food and drugs — See Ch. 193.
- Fruits and vegetables — See Ch. 199.
- Markets — See Ch. 275.
- Restaurants — See Ch. 370.
- Tobacco advertising — See Ch. 452.
- Vending machines — See Ch. 483.

§ 194-1. Definitions.

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

ACCESSORY USE — Constitutes a maximum of 15% of the use of said business establishment. In no case shall such accessory use

dominate, in area, extent or purpose, or in any way exceed 15% of the primary and main use established by the Department of Permit and Inspection Services for such business establishment.

COMMERCIAL KITCHEN — Cooking facilities used for the preparation of food, such as but not limited to commercial ranges, ovens, broilers, grills, griddles, char boilers, pizza ovens, deep-fat-frying equipment or any other similar equipment as so determined by the Department of Permit and Inspection Services.

DEPARTMENT — The Department of Permit and Inspection Services, the Commissioner of Permit and Inspection Services and his or her designee acting under the Commissioner's authority.

FOOD STORE — Any commercial establishment with a total floor space of 20,000 square feet or less, of which the primary use (85% or more) is devoted to the sale and/or display of, but not limited to, cigarettes, dry goods, bottled or canned beverages and prepackaged foods not prepared on the premises. This definition shall not include residential space that may be adjacent to such food store.

PRIMARY USE — Constitutes a minimum of 85% of the principal and main use of the business establishment. The primary use shall be determined and established by the Department of Permit and Inspection Services.

§ 194-2. License required.

No person, firm, corporation or other entity shall operate, maintain or engage in the business of operating a food store in the City of Buffalo without first having been issued a license by the Department of Permit and Inspection Services pursuant to a verified written application upon a form provided by the Department.

§ 194-3. Referral and approval of license application.

- A. All new applications shall be referred to the Department of Permit and Inspection Services Permit Office to determine compliance with all

applicable City zoning laws and ordinances, including determination of permitted and established use of the property location.

- B. All new applications and the renewals therefor shall be referred to the Department of Permit and Inspection Services Inspections Division to determine that the building meets all City and state building codes and to determine whether the business meets and is conforming with any and all established primary and accessory uses.
- C. All new applications and the renewals therefor shall be referred to the Department of Fire to determine that the property location meets all applicable New York State Fire Codes.
- D. All new applications and the renewals therefor shall be referred to the Department of Police for its investigation regarding the moral character of the applicant and an incident history of the property location, with a recommendation for approval or disapproval of the application. All recommendations for disapproval must state the reason for such disapproval in writing.
- E. The City of Buffalo reserves the right to make unannounced, periodic on-site inspections during business hours by any of the aforementioned enforcement agencies to ensure compliance with all applicable laws and ordinances.
- F. All new applications and renewals therefor subject to this chapter shall require Common Council approval. Any license granted under this chapter may be suspended, revoked or renewal thereof refused by the Common Council, after notice and hearing.

§ 194-4. Operation of business.

- A. The owner/operator of any licensed food store shall comply with all provisions of federal, state and local laws and ordinances relating to the conduct of the business, use and maintenance of the premises.
- B. The owner/operator of any licensed food store shall comply with all notices, orders, decisions and rules and regulations made by the Department of Permit and Inspection Services.

- C. A licensed food store shall not have a commercial kitchen, and there shall not be any on-site food consumption or public assembly at on-site public seating areas on the premises.
- D. Any person, firm, corporation or other entity violating the provisions of this chapter may be liable for penalties as prescribed in Chapter 137, Article I, of this Code, and may be subject to immediate closure by the Buffalo Police Department and/or the Department of Permit and Inspection Services.

§ 194-5. Transferability and expiration of license.

- A. All licenses are nontransferable. All licenses issued are valid for only the owner/operator and business location indicated on the license. Any change in business ownership or business location requires a new application.
- B. Said license shall expire annually on April 1 after the issuance thereof, unless revoked by the Department of Permit and Inspection Services for cause.
- C. The annual fee for a food store license shall be as provided in Chapter 175, Fees.

§ 194-6. Complaints.

Written complaints may be received by the Department. Upon investigation, the Department may require a meeting with the owner/operator to determine whether a food store license should be suspended or revoked, or whether a license should be renewed. If outstanding complaints are not resolved, a hearing will be held before the revocation or suspension of the license or renewal is granted.

§ 194-7. Revocation, suspension or nonrenewal of license.

The license of any person, firm, corporation or other entity granted under this chapter may be revoked, suspended or not renewed by the Commissioner of Economic Development and Permit and Inspection Services upon determination by the Department, after notice and

hearing, that the applicant and/or licensee does not meet the requirements of state law, or the Charter and Code of the City of Buffalo for such license, or such applicant and/or licensee has not operated in compliance with such requirements. A license for a food store may not be renewed if, after notice and hearing, it has been determined that a food store owner/operator has not operated such food store in compliance with this chapter or other applicable laws and codes. Such nonrenewal shall be issued in writing and may be appealed pursuant to Article 78 of the Civil Practice Law and Rules. The Commissioner of Economic Development and Permit and Inspection Services may designate an Administrative Law Judge, who shall be an attorney admitted to practice in the State of New York for at least three years, to administer hearings held pursuant to this chapter. Said Administrative Law Judge shall recommend to the Commissioner of the Department of Economic Development and Permit and Inspection Services whether a license should be revoked, suspended, or renewal thereof refused, after notice and hearing.

§ 194-7.1. Procedure governing license renewals.

- A. On or before the first day of March of each year, the Department of Permits and Inspections Services shall forward a list of licenses issued pursuant to this chapter, which shall expire on the first day of April of each year.
- B. On or before the first day of May of each year, the Common Council shall indicate to the Department, in writing, each licensee it believes requires further investigation by the Department prior to the license being renewed.
- C. The Common Council shall also forward to the Department any and all information it deems to be pertinent to the Department's investigation of the licensee.
- D. Renewal of each license that is not specifically designated by the Common Council for investigation by the Department on or before the first day of May of each year shall be subject to the renewal provisions of § 194-7 of this chapter.
- E. Renewal of each license designated for further investigation by the Common Council shall be governed by the following provisions of this section.
- F. If the Department determines that sufficient evidence exists to deny the renewal of a license, the Department shall provide the licensee with notice and an opportunity to be heard regarding the renewal of his or her license and shall also forward a copy of said correspondence to the Common Council for its information.
- G. The Department shall cause any hearings to be conducted in accordance with the provisions of § 194-7 of this chapter.
- H. If the Department denies the renewal of a license after notice to the licensee and a hearing, it shall notify the Common Council of said denial in writing forthwith.
- I. If the Department has caused a hearing to be conducted regarding the renewal of a license, but has found that insufficient evidence exists to deny the renewal of said license, the Department shall forward its decision to the Common Council for final approval.
- J. If the Department, after investigation, but before conducting a hearing, determines that insufficient evidence exists to deny the renewal of a license that the Common Council has caused to be investigated, it shall forward the basis of said determination to the Common Council for its review. If the Common Council disagrees with the Department's determination, it may designate an Administrative Law Judge, who shall be an attorney admitted to practice in the State of New York for at least three years, to administer hearings pursuant to this chapter.
- K. If the Common Council determines after said hearing is held, and after receipt of the recommendation of the Administrative Law Judge, that sufficient evidence exists to deny the renewal of a license issued pursuant to this chapter, it may deny said renewal in writing.
- L. The concurrent approval of both the Common Council and the Department are required for the renewal of a license issued hereunder, consistent with the provisions of this section.

§ 194-8. Closure for operation without license.

Any food store operating without the required food store license shall be immediately closed by order of the Buffalo Police Department or the Department of Permit and Inspection Services. Every day of operation without a license shall constitute a separate violation.

§ 194-9. Check-cashing service notification.

Effective January 1, 2007, any food store that provides, or intends to provide, check-cashing services to customers for a fee shall notify the City Clerk, in writing, of such service or intention.