

ORDINANCE NO. 723

The City Council of the City of Fort Atkinson does hereby ordain as follows:

That Chapter 15, ZONING CODE, Article 15-8, USE-SPECIFIC REGULATIONS, Section 15.8.10, MOBILE MERCHANTS, be created as follows:

15.8.10 MOBILE MERCHANTS

A. Definitions.

“Charitable Organization” shall include any benevolent, philanthropic, patriotic, or eleemosynary person, association or corporation.

“City” hereafter means City of Fort Atkinson

“Merchandise or wares” shall include personal property of any kind and shall include products, goods or materials provided incidental to services offered or sold. The sale of merchandise includes donations required by the seller for the retention of goods by a donor or prospective customer.

“Non-Profit Organization” means not conducted or maintained for the purpose of making a profit as defined by the Federal Government or State of Wisconsin.

“Religious Non-Profit” organization means as defined by Federal and State laws.

“Mobile Merchant” includes any person, firm or corporation, whether as owner, agent, consignee, or employee, whether a resident of the City or not, who engages in a temporary and/or mobile business of selling and delivery of merchandise or wares, other than house to house, within the City, and who in furtherance of such purposes, hires, leases, uses or occupies any building, structure, motor vehicle, trailer, tent or any street, alley or other place within the City for the exhibition and sale of such wares and merchandise either privately or at public auction.

B. Licensing.

1. License Required.

It is unlawful for any mobile merchant as defined above, to engage in any such business within the City without first obtaining a license issued in compliance with the provisions of this Chapter.

Exemptions:

- a. The terms of this Chapter shall not be held to include acts of persons selling personal property at wholesale to dealers in such articles nor to the acts of merchants or their employees in delivering goods in the regular

course of business. Nothing contained in this Chapter shall be held to prohibit any sale required by Statute or by order of any court or to prevent any person conducting a bona fide auction sale pursuant to law.

- b. Mobile merchants, while participating in a fair, market or special event sponsored by either a civic nonprofit organization, a religious non-profit organization, or the City shall be exempt from the provisions of this Chapter, except as set forth in this section, provided that the civic nonprofit or religious non-profit sponsoring organization obtains prior approval from the City for the fair, market or special event and provided that the merchants and nonprofit organization comply with all restrictions and requirements imposed by the City incidental to such approval.

2. License Application.

Applicants for a license under this Chapter must file with the City Zoning Administrator, a sworn application in writing on a form to be furnished by the City Zoning Administrator which shall give the following information:

- a. Name and physical description of the applicant;
- b. Complete permanent home and local address of the applicant;
- c. A brief description of the nature of the business and the goods to be sold.
- d. The length of time for which the right to do business is desired, six (6) months or twelve (12) months, where applicable, or a daily license, for a maximum of ten (10) consecutive days;
- e. A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, other than traffic violations, the nature of the offense and the punishment or penalty assessed therefore;
- f. At the time of filing the application, a fee of twenty five dollars (\$25.00) shall be paid to the City Clerk to cover the cost of the investigation of the facts stated on the initial application;
- g. Proof of approval of health and sanitation by County, State or Federal agencies as required;
- h. For any license issued for use on City property, license holder shall procure and maintain for the duration of the license, a minimum liability and contractual liability policy in the amount of one million dollars (\$1,000,000) for accident, bodily injury and for property damage. A certificate of such insurance shall be filed with the Zoning Administrator as part of the application. The insurance shall name the City, its officials, employees and agents as additional insured. The Certificate of Insurance shall provide thirty days written notice to the City upon cancellation or renewal of material change in policy;
- i. Applicant shall comply with Wisconsin Safety & Professional Services (SPS) Chapter 314, Fire Prevention, as well as National Fire Protection

Association (NFPA) Chapter 1, Fire Code, before a permit to operate is issued.

3. License – Investigation and Issuance.

- a. Upon receipt of each application, it shall be referred to the Chief of Police, who shall immediately institute such investigation of the applicant's business and moral character as he/she deems necessary for the protection of the public good and shall endorse the application in the manner prescribed in this Chapter within ten (10) business days after it has been filed by the applicant with the Zoning Administrator's office.
- b. If, as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police shall not endorse on said application, and detail his/her disapproval and his/her reasons for the same, and return the application to the City Clerk, who shall notify the applicant that his/her application is disapproved and that no license will be issued.
- c. If, as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, the Chief of Police shall endorse on the application, his/her approval and return the application to the City Clerk, who shall upon approval of the Plan Commission, deliver to the applicant his/her license. Such license shall contain the signature of the issuing officer and shall show the name and address of the licensee, the amount of fee paid, and the length of time the same shall be operative as well as the license number and other identifying description of any vehicle used in such business. No license shall be used at any time by any business other than the one to whom it is issued. The Clerk shall keep a record of all licenses issued.

4. License – Fees.

- a. Every applicant for a license under this Chapter who owns, rents or leases real property located within the City used primarily for the business for which license application is made and which property is on the tax rolls of the City, or which is an agent or representative of a person, firm or corporation who owns, rents or leases property located within the City used primarily for the business for which license application is made, and which property is on the tax rolls of the City, shall pay the following license fees: \$25.00 per six month license, \$50.00 per one year license. There will be no proration of license fees. A license year shall run from January 1st to December 31st each year. Six month licenses can run for any consecutive six month period in one calendar year. If renting or leasing property, a valid lease must be provided.
- b. Every applicant for a license under this Chapter who does not own, rent or lease real estate located within the City used primarily for the business for which license application is made shall pay the sum of

\$500.00 for a one year license issued under this Chapter. A license year shall run from January 1st to December 31^s each year. Six month or daily licenses will not be issued under these circumstances. One license may be issued under this provision for operation in City Lot 10 (South Main and South Third Streets). Only one such license shall be issued during any given license year. Application for this license shall be submitted on or before November 1 for the following license year.

- c. Applicants for daily licenses shall pay a license fee of \$5.00 per day.
- d. If more than one qualified application is received for a given year for the license in City Lot 10, the Planning Commission will employ a closed bidding system with a minimum bid of \$500.00 to determine which application should be approved.

5. Exhibition of License.

Licensees are required to exhibit their certification of license during hours of operation.

6. License Revocation.

- a. Licenses issued under the provision of this Chapter may be revoked by the Plan Commission after notice and hearing, for any of the following causes:
 - 1. Acts by the license holder or the employees or agents of the license holder.
 - 2. Fraud, misrepresentation or incorrect statement contained in the application for license;
 - 3. Fraud, misrepresentation or incorrect statement in the course of carrying on his/her business as mobile merchant;
 - 4. Any violation of this Chapter;
 - 5. Conviction of any crime or misdemeanor;
 - 6. Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a danger to the health, safety or general welfare of the public.
 - 7. Failure to use the license and/or conduct business as a mobile merchant for thirty (30) consecutive days or more.
- b. Notice of the hearing of a revocation of a license shall be given by the City Clerk in writing setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his/her last known address at least five (5) days prior to the date set for hearing or shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing.

7. License – Re-Application.

No licensee whose license has been revoked shall make further application until a period of at least six (6) months has elapsed since any previous revocation.

8. License – Term.

A license year shall run from January 1st through December 31st each year. Six month licenses can run for any consecutive six months in one calendar year and can be applied for only once per calendar year.

C. Regulations for Outdoor Merchandise Sales.

Mobile merchants wishing to operate other than those exempt in Section B – 1(b) of this ordinance, may conduct business only on private property in the **C-1, C-2, C-3, C-5, M-1 and M-2** Zoning Districts. There shall also be one space available in City Lot 10 (South Main and South Third Streets) in which mobile merchants may operate. That space will be designated by the City. In addition to all other regulations provided by this Chapter, mobile merchants shall be subject to the following regulations:

1. Vending may not begin until 7:00 a.m., and shall conclude by 10:00 p.m., with the exception that vending in M-1 and M-2 zones may be conducted 24 hours per day.
2. No vending equipment may be located neither within 10' of a marked crosswalk or curb cut nor within 15' of a fire hydrant or Fire Department connection.
3. The individuals conducting the sales shall be responsible for the cleanup of the site and any debris or litter in the immediate area caused by the operation. Vendors shall provide a waste basket for use by customers at their sales location.
4. The individuals and the organization conducting the sales shall be responsible for complying with all applicable rules and regulations provided for in this section.
5. All equipment used at the vending site shall be in a clean and sanitary, hazard free condition and maintained in a presentable appearance and in good repair.
6. Noise emanating from vending sites shall be kept to a minimum, shall not be directed towards the street or sidewalk and shall be 80 decibels or below as measured at a distance of twenty (20) feet.
7. No audio or video equipment such as speakers or video display monitors shall be allowed.

E. Enforcement.

It shall be the duty of the police and/or Building Inspector of the City to require any business that is not known by such officer to be duly licensed, to produce his/her license and to enforce the provisions of this Chapter against any person found to be violating the same.

F. Report of Violation.

The Chief of Police shall report to the City Clerk, all convictions for violation of the Chapter, and the City Clerk shall maintain a record for each license issued and record the reports of violation therein.

G. Appeals.

Any person aggrieved by the action of the City in the denial or revocation of a license, shall have the right to appeal to the Common Council of the City. Such appeals shall be initiated by filing with the Common Council within fourteen (14) days after notice of the action in question. The filing should contain a written statement setting forth fully the grounds for the appeal. The Common Council shall set a time and place for a hearing on such appeal and the notice of such hearing shall be given to the appellant.


H. Forfeitures.

Violations of this ordinance shall result in penalties pursuant to Sec. 1-10 of the City's Code of Ordinances.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

This ordinance shall take effect and be in force from and after the date of its passage and publication.

Adopted: October 21, 2014.



President of the City Council

ATTEST:



Michelle Ebbert, City Clerk