ORDINANCE NO. 801

AN ORDINANCE
TO CREATE SECTIONS 22-456 THROUGH 22-458 OF THE
CITY OF FORT ATKINSON MUNICIPAL CODE
RELATING TO MOBILE MERCHANTS

NOW, THEREFORE, the City Council of the City of Fort Atkinson, Wisconsin, do ordain as follows:

Section 1. Sections 22-456 through 22-458 of the City of Fort Atkinson Municipal Code is hereby created to read as follows:

"Article X. – MOBILE MERCHANTS [8]

Section 22-456. – Definitions.

In this Article, the following definitions shall apply:

A. "Charitable Organization" shall include any benevolent, philanthropic, patriotic, or eleemosynary person, association, or corporation.
B. "City" hereafter means City of Fort Atkinson.
C. "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 perspective customer.
D. "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.
E. "Religious Non-Profit" organization means as defined by Federal and State laws.
F. "Mobile Merchant" includes any person, firm, or corporation, whether as owner, agent, consignee, or employee, whether a resident of the City of 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 other place within the City for the exhibition and sale of such wares and merchandise either privately or at public auction.

Section 22-457 – Licensing.

A. 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 Article.
B. Exemptions:

1. The terms of this Article 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 Article 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.
2. 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 Article, except as set forth in this subsection, provided that the civic, nonprofit, or religious sponsoring organization obtains prior approval from the City for the fair, market, or special event; that the merchants and nonprofit organization comply with all restrictions and requirements imposed by the City incidental to such approval; and that the location of the merchant(s) is included with the approved fair, market, or special event request.

C. License Application. Applicants for a license under this Article must file with the City Clerk, an application which shall provide the following information:
1. Full name, date of birth, and physical description of the applicant and any employees or individuals working on behalf of the applicant;
2. Complete permanent home and local address of the applicant;
3. A brief description of the nature of the business and the goods to be sold;
4. 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 10 consecutive days;
5. The hours of operation the applicant intends to conduct business at certain locations;
6. A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation or any municipal ordinance, other than traffic violations, the nature of the offense and the punishment or penalty assessed therefore;
7. At the time of filing the application, the applicant shall pay the nonrefundable investigation and application review fees to the City Clerk to cover the cost of the investigation and review the initial application;
8. Proof of approval of health and sanitation by County, State, or Federal agencies as required;
9. The location(s) where the applicant intends to conduct business. Mobile Merchants must be located on private property with written permission from the property owner. Mobile Merchants are not permitted to conduct business on residentially-zoned property, nor on City-owned property including parks, sidewalks, rights-of-way, public parking lots, or other public lands or facilities, unless otherwise approved by the City as part of a special event, fair, or market;

10. The 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.

D. License – Investigation and Issuance.
    1. Upon receipt of each application by the City Clerk, the application shall be referred to the Police Chief, 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 Article within ten (10) business days after it has been filed.
    2. If, as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Police Chief shall not endorse the application. The Police Chief shall detail his/her disapproval and reasons for the same and return the application to the City Clerk, who shall notify the applicant that the application is disapproved; that no license will be issued; and the process for an appeal of the denial as outlined in subsection H.
    3. If, as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, the Police Chief shall endorse on the application, his/her approval and return the application to the City Clerk, who shall upon approval, deliver the license to the applicant. 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 license 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.

E. License – Fees. The fees for Mobile Merchant Licenses shall be included in a resolution adopted by the City Council and retained on file with the City Clerk.

F. Exhibition of License. Licensees are required to exhibit the License during the hours of operation.

G. License Revocation.
    1. Licenses issued under this Article may be revoked by the City Council after notice and hearing, for any of the following causes:
        i. Acts by the license holder or the employees or agenda of the license holder;
        ii. Fraud, misrepresentation, or incorrect statement contained in the application for license;
        iii. Fraud, misrepresentation, or incorrect statement in the course of carrying on his/her business as a Mobile Merchant;
        iv. Any violation of this Article;
        v. Conviction of any crime or misdemeanor;
        vi. 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.

2. 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 the 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 the 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 the hearing.

H. Denial of License – Appeal Process.
   1. If an application is denied, the City Clerk shall, in writing, set forth the reason for the denial. An applicant may appeal a denial to the City Council.
   2. The appeal must be in writing, setting forth the reason for the appeal, signed and dated by the applicant, and filed with the City Clerk within 30 days of the date of the denial.
   3. Written appeals that conform to the requirements set forth in this subsection shall be copied and forwarded to the City Council by the City Clerk. The City Clerk shall provide written notice to the appellant of the date, time, and place of the City Council meeting at which the appeal shall be considered.
   4. The appellant may appear, be represented, and present evidence and witnesses. The City Council shall decide by a majority of those voting whether to overrule the administrative denial. Abstaining is not a vote. The City Council may attach conditions and limitations to a granted Mobile Merchant License. Appeals that do not conform to these requirements shall not be considered by the City Council.

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

J. 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 and can be applied for only once per calendar year. Daily licenses may be applied for up to four (4) times per calendar year.

Section 22-458 – Additional Regulations and Enforcement.

A. In addition to all other regulations provided by this Article, 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., unless otherwise approved by the City through a fair, market, or special event.
   2. No vending equipment may be located within 10 feet of a marked crosswalk or curb cut nor within 15 feet of a fire hydrant or Fire Department connection.
   3. The individuals conducting the sale shall be responsible for the cleanup of the site and any debris or litter in the immediate area caused by the

operation. Those conducting the sales 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 Article.
5. All equipment used by the individuals conducting the sales at the site shall be kept in a clean, sanitary, and hazard-free condition and maintained in a presentable appearance and in good repair.
6. Noise emanating from the location(s) 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.

B. Enforcement. It shall be the duty of the Police Department to require any business that is not known by such office to be duly licensed, to produce his/her license, and to enforce the provisions of this Article against any person found to be violating the same.
C. Report of Violation. The Police Chief shall report to the City Clerk, all convictions for violation of the Article, and the City Clerk shall maintain a record for each license issued and record the reports of violations therein.
D. Forfeitures. Violations of this Article shall result in penalties pursuant to Sec. 1-10 of the City's Code of Ordinances."

Footnotes:
[8]

Editor's note – Ord. 753, adopted October 18, 2016, repealed art. X, §§22-456-22-458 entitled "Transient Merchants," which derived from Code 1969, §§8.08(A)-(D). See art. VI of this Chapter for similar provisions.

Section 2. This ordinance shall take effect upon passage, posting, or publication as provided by law.

Enacted by the City Council of the City of Fort Atkinson, Jefferson County, Wisconsin, this 1st day of June, 2021.

Chris Scherer, President

ATTEST:

Michelle Ebbert, City Clerk/Treasurer/Finance Director