



MEMO

TO: Municipal Services Committee

FROM: Karen Harkness, Director of Community and Economic Development
Paula Vandehey, Director of Public Works

DATE: October 25, 2021

SUBJECT: Proposed changes to Municipal Code Section 9, Division 3 – Central Business District Street Vendors.

City staff met to discuss issues that have arisen regarding food trucks within the City's Central Business District. The areas of concern include:

1. The number of licenses allowed for on-street food trucks
2. Where the on-street food trucks are allowed to park

The number of licenses allowed for on-street food trucks

When this ordinance was originally developed, the demand for food trucks was not well-defined so we arbitrarily picked four (4) as a manageable number to start the program. This maximum has not created any challenges until this year. For the first time, all four permits are issued with several other food trucks also applying for CBD permits.

If the number of permits is not increased, we will need a method to determine which of the applicants would be issued the limited number of permits.

Where the on-street food trucks are allowed to park

The current ordinance language includes:

"No sales shall be made within fifty (50) feet of the main entrance of any business selling same or similar products during the hours said business is open for the sale of said products, unless written permission is granted by said business and such documentation is placed on file with the Department of Public Works."

The City Attorney's Office has concerns with this language as it is difficult to define "same or similar product" so they are recommending that this language be deleted altogether.

Therefore, City staff is recommending that the following two section of Municipal Code Chapter 9, Article XI, Division 3 Central Business District Street Vendors be amended as follows:

Section 9-628 (d) *No more than ~~four (4)~~ **eight (8)** Licenses may be issues for on-street units.*

Section 9-640 (i) *No sales shall be made within ~~fifty (50)~~ feet of the main entrance of any business selling same or similar products during the hours said business is open for the sale of said products, unless written permission is granted by said business and such documentation is placed on file with the Department of Public Works.*

The reasons for the above recommendations include:

- Whether the products of two businesses are the same or similar is difficult to enforce and also potentially places the City in an undesirable position of regulating competition between businesses.
- Many of the restaurants downtown are not open during the same hours as the food trucks are downtown.
- Food trucks have been a part of the vibrancy and vitality of downtown for many years.
- Food trucks can be a progression in entrepreneurship. (Food carts to food trucks to brick and mortar)

C: Chris Behrens, City Attorney
Steve Kihl, Environmental Health Supervisor
Todd Freeman, Police Captain

**DIVISION 3. CENTRAL BUSINESS DISTRICT
STREET VENDORS**

Sec. 9-626. Purpose.

It is the intent of the Common Council to control and regulate the use of streets and sidewalks to the end that the safe use of sidewalks by pedestrians and roads by vehicles is ensured and the health, safety and general welfare of the public is protected and maintained. Consistent with this policy, the purpose of these regulations is to assure the safe and orderly performance of selling on streets and sidewalks within the Central Business District.
(Ord 73-12, §1, 8-21-12)

Sec. 9-627. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Amenity strip shall mean the area between the curb and the defined pedestrian right-of-way along College Avenue between Richmond Street and Drew Street. On all other streets, amenity strip shall mean a minimum four- (4-) foot width between the curb and an eight- (8-) foot pedestrian right-of-way.

CBD street vendor means any person who sells or offers for sale any goods, wares, merchandise, or services for sale in the CBD (Central Business District) from any mobile unit which is propelled by human power, including mobile food establishments.

Mobile food establishment means a restaurant or retail food establishment where food is served or sold from a movable vehicle, push cart, or trailer which periodically or continuously changes location and requires a service base to accommodate the unit for servicing, cleaning, inspection and maintenance or except as specified in the Wisconsin Food Code. Mobile food establishment does not include a vehicle which is used solely to transport or deliver food or a common carrier regulated by the state or federal government.

Mobile sidewalk/amenity strip unit shall mean a pushcart or other device which is on wheels and of sufficiently lightweight construction that it can be moved from place to place by one (1) adult person without any auxiliary power. The device shall not be motorized so as to move on its own power.

On-street unit shall mean any vehicle or pedal-powered unit that is readily movable, and designed and equipped to prepare, serve, or sell food.

Vehicle shall mean any motor vehicle as defined by Wis.

Stats. §340.01(35) or trailer as defined by Wis. Stats. §340.01(71).
(Ord 25-05, §1, 4-12-05; Ord 3-12, §1, 1-10-12; Ord 73-12, §1, 8-21-12)

Sec. 9-628. License and Street Occupancy Permit required.

(a) No CBD street vendor shall vend, sell or dispose of or offer to vend, sell or dispose of goods, wares or merchandise, produce or any other thing at any place whatsoever within the CBD without first obtaining a license as set forth in this division. Licensees may obtain no more than two (2) Street Occupancy Permits for any portion of the Central Business District west of Appleton Street; and no more than two (2) Street Occupancy Permits for any portion of the Central Business District east of Appleton Street.

(b) No more than eight (8) Street Occupancy Permits for mobile sidewalk/amenity strip units shall be issued between Appleton Street and Richmond Street. No more than eight (8) Street Occupancy Permits for mobile sidewalk/amenity strip units shall be issued between Appleton Street and Drew Street on College Avenue. This shall include all vendors using such units, whether vending goods or food.

(c) No more than two (2) Street Occupancy Permits for mobile sidewalk/amenity strip units shall be issued per block. One (1) block shall be defined to mean the area between intersections on a single side of the street.

(d) No more than ~~four~~ ^{eight (8)} (4) Licenses may be issued for on-street units.
(Ord 25-05, §1, 4-12-05; Ord 76-11, §1, 4-12-11; Ord 3-12, §1, 1-10-12; Ord 73-12, §1, 8-21-12)

Sec. 9-629. Liability insurance.

To hold a Street Occupancy Permit, the permit holder must have in force liability insurance and must agree to indemnify, defend and hold the City, its employees and agents harmless against all claims, liability, loss, damage, or expense incurred by the City as a result of any injury to or death of any person or damage to property caused by or resulting from the activities for which the permit is granted. As evidence of liability insurance, the permit holder shall furnish a Certificate of Insurance, on a form acceptable to the City, evidencing the existence of adequate liability insurance naming the City of Appleton, its employees and agents as additional insureds in an amount not less than one million dollars (\$1,000,000). Whenever such policy is cancelled, not renewed, or materially changed the insurer and the permit holder shall notify the City of Appleton by certified mail.
(Ord 25-05, §1, 4-12-05; 76-11, §1, 4-12-11; Ord 3-12, §1, 1-10-12; Ord 73-12, §1, 8-21-12)

sale of said products, unless written permission is granted by said business and such documentation is placed on file with the Department of Public Works.

- (4) Once a vendor is licensed, and a Street Occupancy Permit has been obtained, the change of use of those businesses in buildings within the fifty (50) feet limitation noted above shall not affect an existing license nor the timely renewal of the same.

(k) All persons conducting business on a sidewalk or amenity strip must pick up any paper, cardboard, wood or plastic containers, wrappers, or any litter in any form that is deposited by any person on the sidewalk or street within twenty-five (25) feet of the place of conducting business. Each person conducting business on a sidewalk or amenity strip under the provisions of this division shall carry a suitable container for placement of such litter by customers or other persons.

(l) Vendors shall maintain their sales location in a clean, hazard-free condition, and shall not discharge materials onto the sidewalk, gutters or storm drain. All liquid residue must be cleaned up, or in the alternative, protective matting may be placed on the amenity strip to absorb any liquid residue. Said matting must be removed when the vendor closes for the day.

(m) No person may make any loud unreasonable noise of any kind by vocalization or otherwise for the purpose of advertising or attracting attention to his or her wares.

(n) No person shall conduct business as defined herein at a location other than that designated on his or her Street Occupancy Permit/License.

(o) No permitted mobile sidewalk/amenity strip units shall be left unattended on a sidewalk or amenity strip nor remain on the sidewalk or amenity strip between 4:00 a.m. and 8 a.m.

(Ord 3-12, §1, 1-10-12; Ord 73-12, §1, 8-21-12)

Sec. 9-640. Vending of products from vehicles or other on-street unit in the public streets.

(a) No food shall be sold from a vehicle other or on-street unit in any public street in the City of Appleton except in compliance with the requirements of this section and §9-639 above.

(b) Any vehicle or other on-street unit used for vending food in any public street must be designed and constructed specifically for the purpose of vending the product or products to be vended.

(c) Each such vehicle or other on-street unit used for

vending food shall be licensed for such use by the Department of Health.

(d) If such vehicle or other on-street unit is a motor vehicle, it must have valid license plates and registration as provided by Chapter 341 of the Wisconsin Statutes.

(e) A vehicle or other on-street unit which is operated for the purpose of selling food from the unit in the public streets shall be operated only by a person who shall have obtained a license under this division.

(f) In addition, the operator or the owner of any motor vehicle shall furnish proof of current insurance issued by an insurance company authorized to do business in the State of Wisconsin and shall maintain such insurance as a condition of licensing under this division. The insurance shall provide coverage for bodily injury, including accidental death, as well as for claims for property damage which may arise from the operations under the license. The policy limits of such insurance shall be the same as those required in §9-629 above.

(g) Amplified music or other sounds from any vehicle used for the purpose of vending products in the public streets shall comply with the applicable requirements of Chapter 12, Article IV of this code pertaining to noise.

(h) No sales shall be made from a vehicle except from the curbside of said vehicle.

~~(i) No sales shall be made within fifty (50) feet of the main entrance of any business selling same or similar products during the hours said business is open for the sale of said products, unless written permission is granted by said business and such documentation is placed on file with the Department of Public Works.~~

(j) No vehicle may violate any traffic or parking statute or ordinance when stopping to make sales. This includes plugging parking meters, if applicable and not remaining in a location for a longer period of time than the meter allows. Meter bags will not be issued to license holders under this article.

(k) No on-street unit may park adjacent to a sidewalk café or an establishment with a Street Occupancy Permit for tables and chairs when the tables and chairs are present on the amenity strip.

(Ord 3-12, §1, 1-10-12; Ord 73-12, §1, 8-21-12)

Editor's Note: Chapter 9, Division 3 was repealed and recreated via ordinance 3-12 adopted by the Common Council on January 1, 2012, published January 9, 2012 and became effective January 10, 2012.

Editor's Note: Chapter 9, Division 3 was repealed and recreated via ordinance 73-12 adopted by the Common Council on August 15, 2012, published August 20, 2012 and became effective August 21, 2012.