

COMMON COUNCIL

CITY OF WAUPUN, WISCONSIN

ORDINANCE #2024-009

AN ORDINANCE TO AMEND CHAPTER ELEVEN OF THE MUNICIPAL CODE OF THE CITY OF WAUPUN ENTITLED LICENSES AND PERMITS

THE COMMON COUNCIL OF THE CITY OF WAUPUN, DODGE AND FOND DU LAC COUNTY, WISCONSIN ORDAINS:

SECTION 1: Section 11.02 of the Municipal Code of the City of Waupun entitled "Peddlers, Solicitors, and Transient Merchants" will be amended as follows:

11.02 PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS.

- (1) **LICENSE REQUIRED.** It shall be unlawful for any peddler, solicitor or transient merchant, as defined in subsection (2) of this section, to engage in any such business within the City without first obtaining a license therefore in compliance with the provisions of this section.
- (2) **DEFINITIONS.** When used in this section, the following terms shall have the following meanings:
 - (a) Peddler shall include any person who goes from house to house, from place to place or from street to street, conveying goods, wares or merchandise or offering or exposing the same for sale, or making sales and delivering articles to purchasers. It shall not include venders of milk, bakery products, groceries or others who distribute their products to regular customers on established routes.
 - (b) Solicitor shall include any person who goes from house to house, from place to place, or from street to street, soliciting or taking or attempting to take orders for sale of goods, wares or merchandise, including magazines, books, periodicals or professional property of any nature whatsoever, for future delivery, or for service to be performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such order, or whether or not they collecting advanced payments on such orders.
- (3) **EXCEPTIONS.** The terms of this section shall not be held to include the acts of the following persons:
 - (a) Newsboys with established routes.
 - (b) The acts of merchants or their employees in taking orders, at the houses of their regular customers who expect them to call, for goods held by the merchant in stock at established places of business in the City.
 - (c) Acts of merchants and their employees in delivery of such goods.
 - (d) To persons selling personal property at wholesale to dealers in such articles.
 - (e) To a farmer or truck gardener who shall vend, sell or dispose of, or offer to vend, sell or dispose of, the products of the farm or garden occupied and cultivated by him in this state.
 - (f) To an ex-soldier to whom the State has issued a peddler's license because of their physical disability.
 - (g) To a nonprofit service club chapter or a nonprofit educational institution based within the City, or to any other nonprofit charitable or recreational organization with a local chapter based in the City.
- (4) **APPLICATION.** Applicants for a license under this section shall file a sworn application in writing with the City Clerk. Such application shall be on a form furnished by the Clerk and shall contain information indicating the name and address of the applicant; the address within the City from which the proposed business is to be conducted; a brief description of the nature of the business and the goods to be sold or services to be rendered; the name and address of the employer or principal of the applicant, together with credentials establishing the exact relationship; the length of time for which the right to do business is desired; the source of supply of the goods or property proposed to be sold and the proposed method of delivery; the names of at least 2 property owners in the City who will certify as to

the applicant's good character and business respectability, or in lieu thereof, such other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to properly evaluate such character and business responsibility; a statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any other municipal ordinance other than traffic violations, the nature of the offense and punishment or penalty assessed therefor; the last cities or villages where an applicant last carried on business immediately preceding the date of this application, and the addresses from which such business was conducted in those municipalities; and whether or not the applicant is licensed as such a peddler, solicitor or transient merchant by the State and, if so, the circumstances surrounding the issuance of such license.

(5) INVESTIGATION FEE.

(a) Every applicant for a license under this section as a peddler, solicitor or transient merchant shall, at the time of the filing of such application with the City Clerk pay to the Clerk for the City an investigation fee as set by the Common Council on the Official Fee Schedule. The monies so paid shall be retained by the City whether a license is issued to the applicant or not.

(b) Every applicant for a license under this section as a peddler, solicitor or transient merchant, to whom the City has issued such a license within the 12 months immediately preceding the date of the present application, shall pay to the City through the office of the Clerk an investigation fee as set by the Common Council on the Official Fee Schedule.

(6) INVESTIGATION AND ISSUANCE OF LICENSE.

(a) Upon receipt of each application, it shall be referred to the Chief of Police, who shall immediately instigate such investigation of the applicant's business and moral character as he deems necessary for the protection of the public good. The Chief of Police or their designee shall, in their discretion, contact the Police Department and Association of Commerce at the residence of the applicant; the Police Department and Association of Commerce of not to exceed 3 cities or Villages where the applicant has last conducted their business; the Federal Bureau of Investigation, Federal Trade Commission or appropriate State Department; and any other sources which, in the opinion of the Chief of Police will furnish information as to the character and record of the applicant or persons engaged in business with him. The Chief of Police shall endorse the application in the manner prescribed in this section within 10 working days after it has been filed by the applicant with the Clerk.

(b) If, as the result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police or their designee shall endorse on such application their disapproval and their reasons for the same, and return the application to the City Clerk, who shall notify the applicant that their application is disapproved and that no license shall be issued.

(c) If, as the result of such investigation, the character and business responsibility of the applicant is found to be satisfactory, the Chief of Police or their designee shall endorse on the application their approval and return the application to the City Clerk, who, upon the payment of the balance of the license fee and filing of the necessary bond shall deliver the application for license and report or recommendation of the Chief of Police to the City Council for action thereon.

(d) The application for license and recommendation of the Chief of Police shall be considered by the City Council at their next regular, adjourned or special meeting. The City Council, in its discretion, may direct the City Clerk to issue such a license, subject to the conditions herein contained and such further conditions as the Council may impose.

(e) Such license shall contain the signature of the issuing officer and shall show the name, address and class of license issued and the kind of goods to be sold or service to be rendered thereunder, the amount of fee paid, the date of issuance and the length of time the license shall be operative, as well as other identifying descriptions concerning the applicant. No license shall be used at any time by any person other than the one to whom it was issued, except that an employee may serve under a license issued to their employer. The Clerk shall keep a permanent record of all licenses issued.

(7) FEES AND BOND.

(a) The investigation fee, as heretofore set forth, shall permit any applicant to whom a license is to be granted, to conduct their business within the City for a period of not to exceed 2 days without additional cost, excepting for the bond hereinafter set forth. Every applicant for a license under this section and to whom such a license is to be granted, and who proposes to conduct their business within the City for a period of time longer than 2 days, shall pay to the City, through the office of the City Clerk a fee as set by the Common Council on the Official Fee Schedule, for each day, or portion thereof, that such business is to be conducted in the City, over and above the initial 2-day period. The term "day" as used herein shall mean each business day, and shall not include Sundays, holidays or days when no business is conducted.

(b) Every applicant for a license under this section, to whom such a license is to be granted shall, prior to the issuance of such license, file with the City Clerk of the City a surety bond to guarantee the applicant's good, honorable and lawful possession and proper and legal distribution and sale of the merchandise or personal services that they propose to sell. The bond shall be a fee as set by the Common Council on the Official Fee Schedule for each day that the applicant proposes to conduct their business in the City, excepting that the maximum amount of such bond shall be the sum of \$1,000.00. The application for the license herein described shall authorize the City Clerk of the City to utilize the said bond, or portions thereof, to pay for any monetary fine and costs which might be assessed against the applicant, or an employee or agent of the applicant acting in their behalf for violations of any of the provisions of this section, or to satisfy any judgment rendered against the applicant, or an employee or agent of the applicant for violations of any contract existing between the applicant, or their employee or agent for merchandise to be furnished or services to be rendered to any person while the said applicant, or their employee or agent is conducting business within the City during the licensed period.

1. Said surety bond shall be held by the City Clerk for not less than 60 days after the applicant has completed the business set forth in the license, and the bond shall then be returned to the applicant unless the City Clerk has been notified of any actions pending against the said applicant, or an employee or agent of the applicant for the violation of any of the provisions of this section, or for the violation of any contracts existing between the said applicant or their employees or agents with a purchaser of the materials or services.

2. If the City Clerk is notified of any action against the applicant, or their employee or agent for the violation of any of the terms of this section, or for the violation of any contract with or to any purchaser of materials or services, the City Clerk shall then hold such surety bond until satisfaction has been made to the City or to the purchaser of such materials or services, or in lieu thereof, shall deduct the amount or sum necessary to satisfy such judgment due the City or due the purchaser of the materials or services, and shall then remit the balance of the surety bond to the applicant.

(c) The applicant may furnish a certified check, a cashier's check or a money order payable to the City in lieu of the surety bond herein required.

(8)ANNUAL FEE.

(a) Any applicant for a license under this section may apply to the City Council for an annual license. The annual fee shall be a fee as set by the Common Council on the Official Fee Schedule

(b) The surety bond, or acceptable alternative, as described in subsection (7)(b) above shall be required by the City Council of any applicant for an annual license, and such bond shall be a fee as set by the Common Council on the Official Fee Schedule. The surety bond shall be held by the City Clerk under the same conditions as set forth in subsection (7)(b)1. above.

(9)CONDITIONS OF LICENSE.

(a) No license nor any person on their behalf, shall shout, cry out, blow a horn, ring a bell or use any sound amplifying device upon any of the streets, alleys, parks or other public places in the City, or upon private premises without approval of the Chief of Police or their designee.

(b) No licensee shall have any exclusive right to any location in the public streets, nor shall any licensee be permitted a stationary location thereon, nor shall any licensee to operate in a congested area where such operation impedes or inconveniences the public use of such streets. For the purpose of this section the judgment of the Chief of Police or their designee, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced.

(c) The licensee shall be required to exhibit their certificate of license at the request of any citizen.

(10) REVOCATION OF LICENSE.

(a) Licenses issued under the provisions of this section may be revoked by the Mayor or Chief of Police or their designee of the City for any of the following causes:

1. Fraud, misrepresentation or incorrect statement contained in the application for license.
2. Fraud, misrepresentation or incorrect statement made in the course of carrying on their business as peddler, solicitor or transient or itinerant merchant.
3. Any violation of this section.
4. Conviction of any crime or misdemeanor.
5. Conducting the business of peddler, solicitor or transient or itinerant merchant, as the case may be, in an unlawful manner or in such a manner as to come to a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(b) Notice of such revocation of a license shall be given by the Mayor or Chief of Police or their designee in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed to the licensee at their last known address, or shall be delivered by a police officer in the same manner as a summons. Such revocation shall be effective immediately upon service of such notice by personal service or by mail.

(11) APPEAL. Any person aggrieved by the action of the Chief of Police or their designee in the denial of a permit or license as provided in this section, may appeal to the City Council of the City. Such appeal shall be taken by filing with the City Council 14 days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The City Council shall set a time and place for hearing such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in subsection (10) of this section for notice of hearing on revocation.

(12) Any person aggrieved by the action of the Mayor or Chief of Police or their designee in revoking a license or permit previously granted by the action of the City Council, may appeal such revocation to the City Council. Such appeal shall be taken within 7 days of the service of such notice of revocation and shall be filed with the City Clerk. Such appeal shall set forth the grounds for appeal. The Mayor shall call a special Council meeting within 3 days after the filing of such an appeal and shall give not less than 6 hours' notice of such meeting to the applicant and shall permit him to be heard at the meeting. The Council may uphold such revocation, may overrule such revocation, or may reinstate the license of the applicant with such further conditions as the Council may determine to be warranted. If such revocation is upheld, the Council may direct that a portion of the license fee paid be refunded to the applicant.

(13) PENALTY. Any person who shall violate any provision of this section shall forfeit a fee as set by the Common Council on the Official Fee Schedule, together with the costs of prosecution, and in default of payment of the forfeiture and costs shall be imprisoned in the County Jail until such forfeiture and costs of prosecution shall be paid, but not to exceed 20 days. Each day's violation of this section shall constitute a separate offense.

(14) SEVERANCE CLAUSE. The provisions of this section are declared to be severable and if any section, sentence, clause or phrase of this section shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining section, sentences, clauses and phrases of this section, but they shall remain in effect, it being the legislative intent that this section shall stand notwithstanding the invalidity of any part.

SECTION 2: Section 11.025 of the Municipal Code of the City of Waupun entitled “MOBILE FOOD VEHICLE VENDORS” is created as follows:

11.025 MOBILE FOOD VEHICLE VENDORS

- (1) DEFINITIONS. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
- (a) MOBILE FOOD VEHICLE: A restaurant or mobile food establishment where food is served or sold from a movable vehicle, trailer or cart which periodically or continuously changes location.
 - (b) MOBILE: The state of being active, but not necessarily continuous movement.
 - (c) EDIBLE GOODS: shall include but are not limited to:
 - 1) Prepackaged and prepared food including, but not limited to, ice cream, hot dogs, desserts, and pizza.
 - 2) On-site prepared food including, but not limited to, shaved ice, sandwiches, and tacos.
 - (d) MOBILE FOOD VEHICLE VENDOR: The registered owner of a Mobile Food Vehicle or the owner’s agent or employee, or any business which sells Edible Goods from a Mobile Food Vehicle within the city.
 - (e) SELL: The act of exchanging a good for profit or in return for a donation.
 - (f) VEHICLE: Any motor vehicle or trailer as defined by Wisconsin State Statute. “Vehicle” shall also include any bicycle or other self-propelled device.
 - (g) VEND: To sell or to transfer the ownership of an article to another for a price in money.
- (2) RESTRICTIONS.
- (a) It shall be unlawful for any person to do any of the following within a public right-of-way or public property in the City of Waupun without first having obtained a valid Mobile Food Vehicle Vendor license as prescribed in this article:
 - (1) Operate a Mobile Food Vehicle;
 - (2) Serve, sell, or distribute food from a Mobile Food Vehicle;
 - (3) Cook, wrap, package, process, or portion food in a Mobile Food Vehicle for service, sale, or distribution.
 - (b) No person shall park, stop, or operate a Mobile Food Vehicle, nor shall any Mobile Food Vehicle Vendor permit any person to park, stop or operate a Mobile Food Vehicle in a location adjacent to or within a 100-foot radius of the nearest edge of any building or section of a building comprising a licensed food establishment, excluding any patio, awning, or temporary enclosure attached thereto, the kitchen of which is open for serving food to patrons. This requirement may be waived if the most recent application for a Mobile Food Vendor license was submitted together with the written consent of the proprietor of the adjacent licensed food establishment.
 - (c) All Mobile Food Vehicle Vendors shall abide by all parking and traffic laws, ordinances, statutes, rules, and regulations at all times.
 - (i) Designated spaces in the Downtown Central Business District Food Truck Alley will be utilized on a first-come-first reserved basis. When designated food truck spaces are full, vendors may park on Main Street from Carrington to Drummond Streets, and Madison Street from Jefferson to Franklin Streets subject to compliance with parking regulations. The two-hour parking restriction will be strictly enforced. Vendors that violate the two-hour restriction will not receive warning prior to being cited.
 - (ii) No person shall park, stop, or operate a Mobile Food Vehicle, nor shall any Mobile Food Vehicle Vendor permit any person to park, stop or operate a Mobile Food Vehicle in a location within 500 feet of the boundary line of any property upon which a fair, farmer’s market, festival, carnival, circus, special event, or civic event licensed or sanctioned by the city is occurring, except when the vendor has obtained a permit or otherwise properly obtained permission to do so.
 - (d) A person with a valid driver’s license of such a classification to allow the operation of the Mobile Food Vehicle shall be with the Mobile Food Vehicle at all times that any activity is taking place in the Mobile Food Vehicle. The Mobile Food Vehicle Vendor is liable for any violation of this subsection.
 - (e) All signage must be permanently affixed to the Mobile Food Vehicle. No accessory signage shall be placed outside or around the Mobile Food Vehicle.
 - (f) A Mobile Food Vehicle Vendor may vend, sell, or dispose of goods, wares, or merchandise in the city between the hours of 6:00 AM to 9:00 PM (Sunday through Thursday) and from 6:00 AM to 10:00 PM (Friday and

Saturday). Mobile Food Vehicles must be closed, the area cleaned, including garbage removal, and the Mobile Food Vehicle removed by the time specified.

- (g) Mobile Food Vehicle vending hours are not restricted on private property locations.
- (h) A Mobile Food Vehicle Vendor licensee shall keep the premises in a clean and sanitary condition.
- (i) Nothing in this article shall be deemed to supersede or repeal any ordinance relating to noise, park closing hours, or parking, except as specifically provided in this article. Mobile Food Vehicle Vendors shall take every precaution to ensure that their operation does not materially affect the peace and welfare of the general public nor cause any unreasonably loud, disturbing and unnecessary noise or any noise of such character, intensity or duration as to be detrimental to the life or health of any individual or which is in the disturbance of public peace and welfare.
- (j) All business activity relating to the Mobile Food Vehicle in the public right-of-way shall be conducted from the curbside of the Mobile Food Vehicle at all times.
- (k) No food service shall be prepared, sold, or displayed outside the Mobile Food Vehicle.
- (l) No person shall provide or allow any dining area to the Mobile Food Vehicle, including but not limited to, tables, chairs, booths, stools, benches, or stand up counters.

(3) LICENSE REQUIRED; APPLICATION; REGULATION.

- (a) Any person desiring to operate a Mobile Food Vehicle shall make a written application for a Mobile Food Vehicle Vendor license to the city clerk's office. The application for such license shall be on forms provided by the city clerk's office and shall include the following:
 - (1) The name, signature, and address of each applicant and of each member or officer of a corporate applicant.
 - (2) A description, including make, model, and license plate of the Mobile Food Vehicle.
 - (3) A valid copy of all necessary licenses, permits or certificates required by either Dodge County or Fond du Lac County, the State of Wisconsin, or any subsidiary enforcement agencies or departments thereof, including but not limited to valid proof of registration for the Mobile Food Vehicle and driver's license for all operators and employees.
 - (4) A signed statement that the Mobile Food Vehicle Vendor shall hold harmless the city and its officers and employees and shall indemnify and hold harmless the city and its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the license. The Mobile Food Vehicle Vendor shall furnish and maintain such liability insurance as will protect the Mobile Food Vehicle Vendor and the city from all claims for damage to property or bodily injury, including death, which may arise from the operations under the license or in connection therewith. Such insurance shall provide coverage of not less than \$1,000,000.00 per occurrence. The City of Waupun must be named as an additional insured and a copy of the Certificate of Liability Insurance provided with the annual application. The policy shall further provide that it may not be canceled except upon 30 days written notice served upon the city clerk. A license issued pursuant to the provisions of this section shall be invalid at any time the insurance required herein is not maintained and evidence of continuing coverage is not filed with the city clerk.
 - (5) Any additional information deemed necessary by the city clerk to determine if issuance of a Mobile Food Vehicle Vending license to a particular applicant would be in the best interest of the public.
- (b) Upon receipt of an application for a Mobile Food Vehicle Vendor license, the clerk or appropriate department may conduct a background check.
- (c) Each Mobile Food Vehicle Vendor license shall expire on December 31st of each year and the fee will not be prorated.
- (d) All Mobile Food Vehicle Vendors licensed under this section shall pay an annual license fee as determined by the Common Council and listed on the official fee schedule.
- (e) Upon renewal of license, each applicant must provide a new application, a renewal fee as set on the fee schedule, and any new permitting documentation upon the license renewal.
- (f) A Mobile Food Vehicle Vendor license is not transferable from person to person or business to business.
- (g) A Mobile Food Vehicle Vendor license is valid for one Mobile Food Vehicle only.
- (h) The Mobile Food Vehicle Vendor license shall be permanently and prominently affixed to the Mobile Food Vehicle.

- (i) Each and every vendor will at all times keep a "measuring wheel or measuring tape" with a measuring capacity of no less than 200 feet on the Mobile Food Vehicle. The measuring wheel or tape will be available for use by any person operating or working on the Mobile Food Vehicle and by any police officer or other municipal official tasked with enforcing the provisions of this article.
- (j) Mobile Food Vehicles are not permitted on public sidewalks.
- (k) Mobile Food Vehicle Vendors are allowed in City parking lots only as a part of an approved special event application or upon approval by the City Clerk or their designee. Mobile Food Vehicle Vendors are allowed adjacent to or within City parks, but shall not park, stop, or operate a Mobile Food Vehicle, nor permit any person to park, stop, or operate a Mobile Food Vehicle in a location to or within a 200-foot radius of the nearest edge of any building or section of a building located in a City park that sells food or beverage.
- (l) The mobile food establishment will be required to be inspected by the City of Waupun fire department for the purpose of ascertaining and causing to be corrected any conditions or any violations of any law or ordinance related to fire and life safety hazards. The mobile food establishment shall pay any applicable inspection fee for this inspection. The City of Waupun Fire Department shall also have the right to conduct on-site inspections when the mobile food vehicle is operational. A certificate of Compliance shall be permanently and prominently affixed to the mobile food vehicle.

(4) VEHICLE REGULATIONS

- (a) Any Mobile Food Vehicle must be designed and constructed specifically for the purpose of vending food.
- (b) Amplified music or sounds from any Mobile Food Vehicle on public property is not allowed.
- (c) All Mobile Food Vehicle Vendors shall be entirely self-contained in regard to gas, water, electricity, and equipment(s) required for the operation of the Mobile Food Vehicle.
- (d) All Mobile Food Vehicles must have valid license plates and registration as provided by Wisconsin State Statutes.
- (e) No Mobile Food Vehicle may violate any traffic or parking statute or ordinance.
- (f) No flashing or blinking lights, or strobe lights are allowed on a Mobile Food Vehicle or related signage when the establishment is parked and engaged in serving customers.
- (g) All Mobile Food Vehicles shall comply with all Federal, State, and local regulations regarding vehicle size requirements.
- (h) All Mobile Food Vehicle Vendors are prohibited from connecting to light poles, utility poles, or any public source of electricity, water or sewer, or to any planter or tree or other public amenity. Authorization to use City utilities in City parks may be granted by the Director of Public Works and will be required to pay an additional fee as listed on the fee schedule.

(5) SUSPENSION AND REVOCATION.

- (a) Nothing in this code shall be deemed to supersede or repeal any ordinance relating to noise, park closing hours, or parking, except as specifically provided in the article. Mobile Food Vehicle Vendors will take every precaution to ensure that their operations do not materially affect the peace and welfare of the general public nor cause any unreasonably loud, disturbing and unnecessary noise or any noise of such character, intensity or duration as to be detrimental to the life or health of any individual or which is in the disturbance of public peace and welfare.

SECTION 3: All Ordinances or portions of Ordinances inconsistent with this Ordinance are hereby repealed.

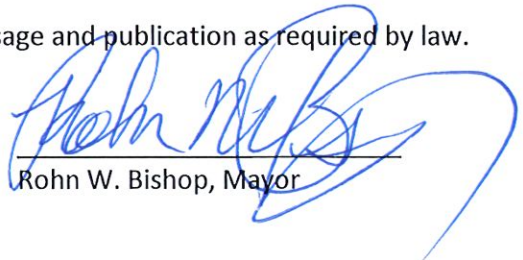
SECTION 4: This Ordinance shall be in full force and effect upon its passage and publication as required by law.

Adopted this 10th day of September 2024.

ATTEST:



Angela J. Hull, City Clerk/Treasurer


Rohn W. Bishop, Mayor