

Ordinance 0007-19 – Mobile Food Establishment

An ordinance to amend Chapter 22.- Businesses, Professions and Occupations of the City of Racine Code of Ordinances in order to regulate mobile food establishments.

WHEREAS, the City desires to regulate mobile and temporary food vending activities in order to protect the public health, safety and welfare of its residents, to encourage an active and social pedestrian environment within appropriate areas of the City while protecting its brick and mortar restaurant establishments, and to promote the orderly and safe use of the public right-of-way within the City; and

WHEREAS, the City has authority under Wis. Stat. sec. 62.11(5) to regulate and license mobile food establishments in order to protect the public's health, safety and welfare;

NOW THEREFORE, the Common Council of the City of Racine, Wisconsin, do ordain as follows:

Part 1: To create Chapter 22, Article XXXV. – Mobile Food Establishment to read as follows:

“Article XXXV. – Mobile Food Establishments.

Sec. 22-539. - Definitions.

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

Alley means every public right-of-way within city limits primarily intended to provide access to the rear of property fronting upon another highway and not for the use of through traffic.

Angle parking space means a parking space that is oriented at an acute angle to the curb and direction of approach.

City block means the smallest area of land that is surrounded by two streets or a combination of streets, public parks, cemeteries, railroad right-of-ways, shorelines of waterways, municipal boundary lines, township lines or country lines, and is measured from the centerline of one intersection to the next closest intersection.

City park means a parcel of land owned, operated, or designated as a park by the City of Racine.

Farmers market means a food market where 2 or more individuals gather on a regular and recurring basis to sell, directly to the consumer, any food that is prepared by the

individual or raw agricultural commodities that are grown, harvested or collected by the individual.

Food means a raw, cooked or processed edible substance, beverage, ice, water, or ingredient used or intended for use in whole or in part for human consumption.

Hard-surfaced means a surface that is comprised of concrete, asphalt or paver stones.

Licensee means the person or entity to whom the mobile food establishment license has been issued, and includes any of his or her agents, employees, members or volunteers.

Mobile food establishment means a restaurant or retail food establishment where food is served or sold from a movable vehicle, cart, stand, trailer, boat, unit, or other device, whether motorized or non-motorized, which periodically or continuously changes location and requires a service base to accommodate the unit for servicing, cleaning, inspection and maintenance; but 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. For purposes of this article, a mobile food establishment shall consist of the vending unit from which food is sold or served, along with any vehicle that may be attached to that unit.

Motorized vending unit means a food truck, trailer or any other device from which food is sold or served and which is typically towed by a motorized vehicle.

Non-motorized vending unit means a food cart, stand, kiosk or any other device from which food is sold or served and which does not require a motorized vehicle to move from site to site; these include devices that are typically pushed, pedaled, pulled or carried by the operator.

Parking space, metered means any space within a parking meter zone adjacent to a parking meter, and which is duly designated for the parking of a single vehicle by lines painted or otherwise durably marked on the curb or on the surface of the street adjacent to or adjoining the parking meters.

Private property means real property that is owned by a private individual or entity, and is not part of the public right-of-way.

Public right-of-way or right-of-way means any real property over which an easement has been granted or reserved to the local, state or federal government for transportation purposes, and includes that part of every street and alley, the grade of which has been established, between the lot line and the curb and from property line to property line, including tree planting easements.

Public nuisance means a thing, act, occupation, condition or use of property that continues in the city for such time as to do any of the following:

- (1) Substantially annoy, injure, or endanger the comfort, health, repose, peace, order, or safety of the public; or
- (2) In any way render the public insecure in life or in the use of property; or
- (3) Greatly offend the public morals or decency; or
- (4) Unlawfully and substantially interfere with, obstruct, or attempt to obstruct or render dangerous for passage any street, alley, highway, navigable body of water, or other public way, or the use of public property.

Restaurant means any building, room or place where meals are prepared, served or sold to transients or the general public, and all places used in connection with the building, room, or place and includes any public or private school lunchroom for which food service is provided by contract, except as otherwise defined in Wis. Admin. ATCP § 75.103(5) "Meals" does not include soft drinks, ice cream, milk, milk drinks, ice and confections.

Service base means an operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

Special event means a public event sponsored by a registered organization and held within a fixed perimeter, where one or more vendors assemble for the purpose of selling goods, services, food or wares and/or providing entertainment or amusement, and for which a license under section 22-538 of the ordinance has been issued.

Vendor or mobile food vendor means the licensee of a mobile food establishment or the owner of a mobile food establishment, and includes any of his or her agents, employees, members or volunteers.

Vision clearance triangle means the triangle space formed by two intersecting street lines or the intersection of a street line with an alley line or the intersection of a street line with a private drive and a line joining points on such street lines or street and alley lines or street and private lines, located a minimum distance of 25 feet from the point of intersection of the two street lines or located a minimum distance of 10 feet from the point of intersection of a street line and an alley line or of a street line and a private drive line.

Unit or mobile food vending unit means a food truck, trailer, cart, stand, kiosk or other device from which food is sold or served, whether motorized or non-motorized. For purposes of this article, a mobile food vending unit shall consist of the vending unit from which food is sold or served, along with any vehicle that may be attached to that unit.

State Law reference— Retail food establishments, Wis. Admin. Code chapter ATCP 75; Wisconsin Food Code, Wis. Admin. Code chapter ATCP 75 Appendix; Food, lodging and recreation, definitions, Wis. Stat. § 97.01.

Cross Reference—Definitions, traffic and vehicles, § 94-241; Subdivisions of land, definitions, § 86-1; Nuisance properties, §66-1001 et seq.; Special event license, § 22-538; Yard requirements and open space, § 114-254(n).

Sec. 22-540. - License required; application, fees and issuance; and restrictions.

a) License required.

(1) No person may operate or cause to be operated a mobile food establishment with the City of Racine without first obtaining a mobile food establishment license as required by this article.

(2) A separate license shall be required for each mobile food establishment. Such license shall be conspicuously displayed in view of the public in and on the mobile food establishment at all times.

(3) A mobile food establishment license shall not be transferable from person to person or from unit to unit.

(4) The license for a mobile food establishment operating on an intermittent or permanent basis shall be valid for a period of one year from July 1 to June 30, unless otherwise suspended or revoked. The license may be renewed annually upon application and satisfaction of the requirements of this article.

(5) The license for a mobile food establishment operating on a temporary basis shall be valid only for the period specified in the license, unless otherwise suspended or revoked.

b) Application, fees and issuance.

(1) The applicant shall submit a completed application to the city clerk on a form provided by the city clerk. The application shall require approval from the health and fire department following an inspection of each mobile food vending unit by the respective departments.

(2) The applicant shall submit the license fee with a completed application, which shall be determined by the budget and stated on the fee schedule. No license fee shall be refundable unless such application is denied. The annual license fee may vary depending on whether the applicant intends to operate a motorized or non-motorized vending unit. The city clerk may also issue a temporary license for specific days within a license year.

(3) The applicant shall provide satisfactory proof of liability insurance.

a) The minimum policy limits shall be \$1,000,000.00 per occurrence bodily injury and \$50,000.00 per occurrence property damage, and products liability coverage in the amount of \$1,000,000.00 per occurrence. The applicant shall submit to the city clerk a valid certificate of insurance with the application, which shall name the city as an additional insured. The policy of insurance shall be with a company authorized to do business in the state, and placed with a carrier with an A.M. Best rating of no less than A-VII, or equivalent, insuring the owner of the vehicle against loss or damage that may result to any person or property from the operation or defective condition of the vehicle.

b) The insurance policy or certificate of insurance required by this section, and renewals thereof, shall be filed with the city clerk and reviewed by the city attorney, and all such policies shall contain a clause prohibiting cancellation or reduction in coverage except upon ten days' written notice to the city. If notice of cancellation is received and the license holder fails within the period specified in the notice of cancellation to provide new coverage or reinstate such coverage and present evidence thereof to the city clerk, the provider's license as it applies to such mobile food vending unit(s) shall be terminated at 12:01 a.m. on the day the policy ceases to be in effect. In requiring such insurance, the city makes no representations or commitments whatsoever as to the sufficiency or adequacy with respect thereto and assumes no obligations to the public by virtue of having required such insurance to be submitted and filed with the city.

(4) Upon satisfaction of the requirements above and except as otherwise prohibited under par. (c), the city clerk shall issue a mobile food establishment license to the applicant. Any applicant who has been denied or denied renewal under this section may appeal to the public safety and licensing committee by notifying the city clerk in writing within 10 days of the notice of denial.

c) Restrictions.

(1) No license shall be issued or renewed for any mobile food vendor or establishment unless all requirements under this article, along with any applicable sections of this Code and of state law relating to the operation of a mobile food establishment, have been satisfied.

(2) No license shall be issued or renewed for any applicant who provides a materially false statement on his or her license application.

(3) No license shall be issued or renewed for any applicant who has violated any provisions of this article, or any provisions in this Code or of state law relating to the operation of a mobile food establishment, on at least two separate occasions within the previous 12 month period. This section does not require repeated violations of the same provision(s).

(4) An applicant who has been denied or denied renewal of a license under this section shall not be eligible and may not apply for another license for a period of 12 months after the date of such denial.

State law reference—Wisconsin Food Code, Wis. Admin. Code Chapter ATCP 75 Appendix; Retail food establishments; licensing, Wis. Admin. Ch. ATCP 75.03; Retail food establishment, Wis. Admin. Ch. ATCP 97.30.

Sec. 22-541. – Inspections.

- a) A mobile food vending unit shall be made available for inspection by the health department or other city official, at any reasonable time while it is in operation within the city, for purposes of determining compliance with this Code.
- b) Refusal to allow for such inspections may constitute grounds for suspension, revocation or non-renewal of the license.

Sec. 22-542. – Exemptions to the licensing requirements of this article.

- a) Non-Profit Organizations. Sales activities by a charitable, educational, or religious organization which is exempt from taxation under section 501(c)(3) of the United States Internal Revenue Code when the proceeds thereof shall be applied to the payment of the expenses thereof and the charitable or religious object for which the charitable or religious society exists are exempt from obtaining a mobile food establishment license, provided that such sales are not conducted by such organization in excess of three (3) consecutive days in any seven-day period at the same location.
- b) Farmers markets. An individual vendor operating as part of a bona fide farmers market is exempt from obtaining a mobile food establishment license during the hours in which the farmers market is in operation.
- c) Operation as part of special event license. An individual vendor operating under the umbrella of a special event license pursuant to section 22-538 of this Code is exempt from obtaining a mobile food establishment license during the time in which the special event is in operation.
- d) Extension of the premises. A vendor who wishes to sell food ancillary to his or her existing restaurant is exempt from obtaining a mobile food establishment license, if all of the following conditions are met:
 - (1) There is a primary land use in a building, which is constructed or which is being constructed, on the parcel in which the mobile food establishment would be located;
 - (2) Sales of food, associated with the primary structure on the parcel would be allowed, or is lawfully occurring on said parcel;

(3) The parcel has been classified by the city assessor to be exempt, industrial, or commercial; and

(4) The mobile food vendor is the owner of the parcel or owns a business in a permanent structure on the parcel where the mobile food establishment would be located.

e) Temporary or seasonal sales of unprocessed whole food. A vendor conducting temporary or seasonal sales of unprocessed whole food is exempt from obtaining a mobile food establishment license, but may be required to obtain a produce cart license pursuant to Article XXXIV of this chapter.

Cross reference—Special event license, § 22-538; Produce carts, § 22-1258 et seq.

Sec. 22-543. – Suspension and revocation of license.

a) Grounds for suspension or revocation.

(1) The applicant or licensee does not meet or no longer meets the requirements of this article, any applicable provisions of this Code, or any provisions of state law relating to the operation of a mobile food establishment.

(2) The applicant or licensee has violated the provisions of this article, any applicable provisions in this Code, or any provisions of state law relating to the operation of a mobile food establishment, on at least two separate occasions within 12 month of the application date. This section does not require repeated violations of the same provision(s).

(3) The applicant or licensee provided a materially false statement or a fraudulent information on the license application.

(4) The applicant or licensee has operated his or her mobile food establishment in such a way as to create a public nuisance.

b) Procedure for suspension or revocation.

(1) Hearing. Whenever there is cause for suspension or revocation under this section, a hearing shall be scheduled before the public safety and licensing committee as soon as practicable. At the hearing, the licensee shall have the right to call, examine and cross-examine witnesses, and the right to have the proceedings recorded at the person's own expense.

(2) Notice of hearing. The city clerk shall send written notice to the licensee at least ten days prior to the hearing via first class mail. The notice shall inform the licensee of the allegations against him or her, as well as his or her rights to a hearing.

(3) Failure to appear. If the licensee fails to appear at such hearing, the allegations shall be taken as true and if the committee finds the allegations to be sufficient, the license shall be revoked. The clerk shall give notice of the revocation to the person whose license is revoked.

(4) Decision. If the committee finds the allegations to be true, it shall recommend suspension or revocation of such license. If the committee finds the allegations to be untrue, the proceedings shall be dismissed without cost to the accused. Such recommendation shall be made to the common council, whose decision shall be final.

(5) Notice of suspension or revocation. The city clerk shall send notice of the suspension or revocation as soon as practicable to the person whose license has been suspended or revoked and the reasons therefor.

c) Judicial review. Within 30 days of the common council's decision, any person aggrieved by such decision may request judicial review with the Circuit Court.

d) Restrictions. Any licensee whose license has been revoked under this section shall not be eligible to reapply for a period of 12 months after the date of revocation.

e) Notwithstanding any of the above, any license or permit issued by the health department may be suspended or revoked pursuant to any local, state or federal health code regulations, including but not limited to the Wisconsin Food Code and ATCP ch. 75.

State law reference-- Wisconsin Food Code, Wis. Admin. Code Chapter ATCP 75 Appendix; Retail food establishments; licensing, Wis. Admin. Ch. ATCP 75.03; Retail food establishment, Wis. Admin. Ch. ATCP 97.30; Municipal Administrative Procedure, Wis. Stats. Ch. 68.

Sec. 22-544. – Operating during a special event.

No mobile food establishment may operate within two city blocks of the affected blocks during the scheduled hours of operation of an event for which a special event license has been issued, unless permission has been issued by the license holder of the special event. For the purposes of this section, "affected blocks" are any blocks containing any portion of a block for which the special event permit has been issued.

Sec. 22-545. - General provisions.

The following provisions are applicable to all mobile food establishments:

a) A mobile food establishment shall return to its service base at least every 24 hours for servicing and maintenance.

b) No vendor may use electrical connections for a mobile food establishment, except for generators that are attached to the mobile food vending unit.

c) No vendor may operate a generator or motor vehicle motor that produces excessive sound or vibration in violation of chapter 42, Article V of this Code; and no vendor may shout, make any outcry, blow a horn, or use any other sound amplifying device for purposes of advertising or attracting attention to the operation, except as permitted in section 22-549.

d) No vendor may leave any location without first collecting and removing all trash and refuse associated with the operation of a mobile food vending unit, including wastewater and all products left in the surrounding area by patrons or the licensee as a result of the operation. All trash and refuse must be disposed of in accordance with city regulations.

e) All motorized vending units shall provide at least one trash receptacle for the use of its patrons during all hours of operation.

f) A mobile food vending unit must comply with all state and local traffic regulations including Wis. Stats. Ch. 346 and chapter 94 of this Code, and must be legally parked at all times.

g) No vendor may operate or conduct any sale to any person situated in a motor vehicle.

h) No vendor may stop, idle, park or operate from a location where an alley, median strip, safety island, bike lane, fire lane, vision clearance triangle, loading zone, or special registration space would be blocked by either the mobile food vending unit or its patrons.

i) No vendor may not block or restrict an individual's access to a business or residence; a vendor shall allow a minimum five feet of clearance on sidewalks for pedestrians.

j) All sales must be made directly from the mobile food vending unit and if operating within the public right-of-way, only from the sidewalk side of the mobile food vending unit, unless a reasonable accommodation is necessary to serve a customer with a disability.

Sec. 22-546. –Operating in the public right-of-way.

In addition to the general provisions stated above, the following provisions are applicable to all mobile food establishments operating within public right-of-way:

a) No vendor may leave a mobile food vending unit unattended at any point.

b) No vendor may operate in the public right-of-way within 250 feet of the nearest customer entrance of a restaurant while the restaurant is open and operating, as

measured by a straight line from the center of the nearest customer entrance to the nearest surface of the mobile food establishment. For purposes of this section, another mobile food establishment shall not be considered a restaurant. Any restaurant may choose to waive the buffer distance for all mobile food establishments in the surrounding area by filling out a waiver form provided by the city clerk.

c) No vendor may put up more than one sandwich board type sign, which shall not exceed six square feet. The sign may be placed only on the sidewalk within five feet of where the mobile food vending unit is located and must conform to all sign regulations in chapter 114 of this Code.

d) No vendor may operate, store, or park any mobile food vending unit in the public right-of-way between the hours of 10:00 p.m. - 6:30 a.m., unless otherwise permitted as part of a special event license.

e) No vendor may operate upon any lot or portion of the public right-of-way that is not hard-surfaced, except as otherwise permitted in this article.

f) No mobile food establishment may operate in or upon any angle parking spaces.

g) No mobile food establishments operating in a metered parking space may occupy more than one parking space at any given time unless said vending unit cannot park entirely within one parking space; in which instance the vending unit may occupy no more than two parking spaces at a time.

h) A mobile food establishment must be completely mobile. No vendor shall set up or maintain the use of any table, chair, crate, carton, rack or any other devices in the public right-of-way to provide seating or an eating area for the mobile food vending operation. This shall not preclude or eliminate the requirement in section 22-545 (e), that a vendor provide a trash receptacle for the use of its patrons.

Cross reference – Sign regulations, § 114-1026 et seq.

Sec. 22-547. – Operating within city parks or upon city owned property.

In addition to the general provisions stated above, the following provisions are applicable to all mobile food establishments operating within city parks or upon city owned property:

a) No vendor may operate within a city park or city owned property without first obtaining a permit from the department of parks, recreation and cultural services, pursuant to section 70-85 of this Code, and may operate only within the confines of that permit.

b) No vendor may operate within a city park or upon city owned property while the premises is closed to the public, unless permitted as part of a special event license.

c) A vendor operating within a city park or upon city owned property is also subject to the general provisions relating to parks and recreation areas pursuant to chapter 70 of this Code.

Cross reference—Parks and recreation areas, § 70-76 et seq.

Sec. 22-548. – Specific restrictions for operating on private property.

In addition to the general provisions stated above, the following provisions are applicable to all mobile food establishments operating on private property:

a) No vendor may operate in a residential zoning districts within the city, unless the parcel has been classified by the city assessor to be exempt, industrial, or commercial.

b) No vendor may operate any mobile food vending unit between the hours of 2:00 a.m. - 6:30 a.m.

c) A vendor may place signs on or attached directly to a mobile food vending unit, so long as they comply with all applicable signage regulations under chapter 114 of this Code. Any such signage shall be exempt from total signage area allocated to the parcel.

d) A vendor may place freestanding signs associated with the operation of the mobile food vending unit on private property. Any such signage shall count against the total signage area allotted to the parcel.

Cross reference – Sign regulations, § 114-1026 et seq.

Sec. 22-549. Specific provisions applicable for ice cream sales.

In addition to the general provisions stated above, the following provisions are applicable to all mobile food establishments engaging in the sale of ice cream or similar frozen confections from a vehicle or from a carried container:

a) The mobile food vending unit shall not exceed five miles per hour while playing music.

b) Sales are restricted to pedestrians and only at such a time when the mobile food vending unit has come to a complete stop and is legally parked.

c) No vendor may operate before 10:00 a.m. and after 8:00 p.m. or sunset, whichever occurs first.

d) No loudspeaker or other sound system which may disturb the peace in the area is permitted. Music from the mobile food vending unit is permitted to draw attention to the

sales operation, but shall not be of a magnitude to create a disturbance in the surrounding area.

e) A sign displaying the name of the company and telephone number shall be affixed to the vehicle and shall be no smaller than two square feet.”

State law reference – Retail food establishments; licensing, Wis. Admin. Ch. ATCP 75.03; Retail food establishment, Wis. Admin. Ch. ATCP 97.30.

Part 2: To amend Article XVII, Chapter 22 of the City of Racine Code of Ordinances to remove all four instances of the word “food” from sections 22-531 and 22-537.

Part 3: This ordinance shall take effect upon passage by a majority vote of the members-elect of the City Common Council and publication or posting as required by law.

Fiscal Note: N/A