

**CITY OF CEDARBURG
ORDINANCE NO. 2019-07**

**SEC. 7-18 REGULATION OF MOBILE VENDORS AND MOBILE FOOD
ESTABLISHMENTS**

**An Ordinance Creating Section 7-18
Of the City of Cedarburg Code of Ordinances**

WHEREAS, the City desires to provide for the health, safety, and well-being of its residents, to ensure and maintain safe food service and public safety, and to promote the orderly and safe use of the public right-of-way within the City;

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

That a new section be created in the City of Cedarburg Code of Ordinances as follows:

SEC. 7-18-1 DEFINITIONS

In this Chapter:

(a) **Mobile Food Vendor** or **Mobile Vendor** means the owner, owner's agent or employees of a mobile establishment within the City of Cedarburg. A Mobile Food Vendor or Vendor shall expressly not include Direct Seller's, as defined in Section 7-4-2(a) of the Code of Ordinances.

(b) **Mobile Food Establishment** means a restaurant or retail food establishment where ready-to-eat food is cooked, wrapped, packaged, processed, served or sold from a vehicle, car, truck, trailer, cart, or similar portable device which may or should be capable of periodically changing locations. This ordinance does not intend to regulate home delivery of food and beverage items.

(c) **Food** means all articles used for food, non-alcoholic drink or condiment including ice or water used by humans whether simple, mixed or compound articles used or intended for use as ingredients in the composition or preparation thereof.

(d) **Mobile Vendor** means a retail establishment where products or services of any kind are served, offered or sold from a vehicle, car, truck, trailer, cart, or similar portable device which may or should be capable of periodically changing locations.

SEC. 7-18-2 LICENSE REQUIRED. It shall be unlawful for a person to operate as a Mobile Vendor or Mobile Food Establishment, serve, sell or distribute food from a Mobile Food Establishment or cook, wrap, package, process, serve or portion food in a Mobile Food Establishment in the City of Cedarburg without first having obtained a valid Mobile Vendor or Mobile Food Establishment license from the City of Cedarburg Plan Commission Clerk as provided for by this chapter.

SEC. 7-18-3 EXEMPTIONS FROM LICENSE REQUIREMENT. Mobile Food Establishments and Mobile Vendors participating in any of the festivals, organizations, activities, or events listed below are exempt from obtaining a mobile food establishment license and the location and general operation restrictions required by this chapter.

(a) Any Mobile Vendor or Mobile Food Establishment on premises and controlled, regulated or permitted through section 7-14 (Festival Celebration Permit) of the Code of Ordinances.

(b) Any Mobile Food Vendor or Mobile Food Establishment acting by, through or under Summer Sounds at Cedar Creek Park organized by Cedarburg Music Festivals.

(1) Limited to no more than twelve (12) Friday night events per year.

(c) Any person selling goods at a farmer's market or flea market, on premises and under the control of the farmer's market or flea market organizers.

(d) Any person selling goods on premises at the Ozaukee County Fairgrounds.

(e) Any fundraising activities sponsored by the City of Cedarburg.

(ef) Any other festival/organization/activity/event that the City of Cedarburg Plan Commission deems appropriate for exemption.

(fg) Any Mobile Food Establishment or Mobile Vendor commissioned or paid directly by a private land owner and who does not receive direct payment from persons receiving food items, goods, or services from the Mobile Food Establishment or Mobile Vendor.

SEC. 7-18-4 APPLICATION. Any person desiring to operate as a Mobile Vendor or Mobile Food Establishment shall make written application for a Mobile Vendor or Mobile Food Establishment license to the City Clerk. The application shall be on the form provided by the City Clerk's Office and shall include the following:

(a) The name, signature, and address of each applicant and each member or officer of a corporate applicant.

(b) The name of each employee of the mobile food establishment.

(1) The applicant must provide to the city clerk's office the name and address of any new employee within thirty (30) days of hiring.

(c) A description of the mobile vending vehicle or cart, including the make, model, VIN number and license plate for mobile vending vehicles.

(d) A valid copy of all necessary licenses for the operation of the Mobile Vendor or Mobile Food Establishment, including, but not limited to, licenses or certificates required by Ozaukee County, the state of Wisconsin, or any subsidiary enforcement agencies or departments thereof.

(e) A signed statement that the vendor shall hold harmless the city and its officers and employees, and shall indemnify the city, 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. Vendor shall furnish and maintain such public liability insurance coverage of not less than \$1,000,000.00

(f) The proposed location of the vending vehicle or cart and any additional information as deemed necessary by city staff.

(g) The city reserves the right to conduct a background check of the applicant and the applicant's employees.

SEC. 7-18-5 INVESTIGATION.

(a) Upon receipt of each application from the ~~Plan Commission~~ City Clerk's Office, the City of Cedarburg Police Department shall conduct an investigation of the statements made on such application, including a background check of the applicant and the employees of the applicant.

(b) After investigation by the City of Cedarburg Police Department, the application shall be reviewed for approval or denial by the City Clerk's Office. The ~~Plan Commission~~ City Clerk's Office shall refuse to license the applicant if it is determined, pursuant to the investigation above, that: the application contains any material omission or materially inaccurate statement; complaints of a material nature have been received against the applicant by the authorities in the preceding cities, villages and towns, not exceeding three (3), in which the applicant conducted similar business; the applicant or an employee of the

applicant was convicted of a crime, statutory violation or ordinance violation within the last five (5) years, the nature of which is directly related to the applicant's or an employee's fitness to engage in the conduct for which the license is requested; the applicant failed to comply with any applicable provision of section 7-18-4 or the applicant failed to pay the fees required for the license. The City Clerk shall notify the applicant, in writing, of any denial of issuance of a license, and the reasons therefore.

SEC. 7-18-6 LOCATION RESTRICTIONS. Except as provided herein, licensed Mobile Vendor and Mobile Food Establishments shall not operate upon or in the public road right-of-way, public grounds, or public alleys. Licensed Mobile Vendors and Mobile Food Establishments may operate on private non-residential property, with the written permission of the private property owner.

(a) The Plan Commission may grant a temporary use permit to a Mobile Food Establishment for operation in the Historic District Preservation Overlay District for any activity or event that it deems appropriate. The Plan Commission shall specify the location, hours of operation, and any other restrictions it deems appropriate for the specific activity or event.

SEC. 7-18-7 GENERAL OPERATION RESTRICTIONS.

(a) Hours of operation for a Mobile Vendor or Mobile Food Establishment shall be no earlier than 10:00 a.m. to no later than 10:00 pm.

(b) Any power required for the Mobile Vendor or Mobile Food Establishment shall not use utilities drawn from the public right-of-way. No power cable or equipment shall be extended over any City street, alley or sidewalk.

(c) No Mobile Vendor or Mobile Food Establishment shall use or maintain any outside sound amplifying equipment, lights, or noisemakers of any kind, while stationary.

(d) Mobile Vendors or Mobile Food Establishments are responsible for providing trash/refuse receptacles on site and for removing such receptacles at the conclusion of sales. Trash or refuse from the Mobile Vendor or Mobile Food Vendor's receptacles shall not be placed in any public or private trash receptacles, including dumpsters, without the private trash receptacles' owner's consent.

(e) Mobile Vendors and Mobile Food Establishments 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/or unnecessary noise or any other noise of any character, intensity or duration as to be detrimental or disturbing to the public peace or welfare.

(f) Mobile Vendors and Mobile Food Establishments shall not operate on dates during which a permitted festival is occurring within the City pursuant to Section 7-14 of the Code of Ordinances.

SEC. 7-18-8 FEES AND CONDITIONS.

(a) All Licensed Mobile Vendors and Mobile Food Establishments shall pay an annual license fee in the amount of \$100.

(b) Licenses shall commence on January 1 and end on December 31 of each calendar year. Licenses applied for after January 1 of a year will expire on December 31 of that year; License fees shall not be pro-rated.

(c) The license is not transferrable from person to person or mobile vending vehicle or cart to mobile vending vehicle or cart.

(d) Each Mobile Vendor or Mobile Food Establishment shall be separately licensed.

(e) Mobile Vendors and Mobile Food Establishments shall comply with NFPA-1 Fire Code and Wisconsin Administrative Code SPS 314.50.

SEC. 7-18-9 ENFORCEMENT. The enforcement of this article shall be under the jurisdiction of the Building Inspector, Fire Department, and Police Department, who shall have the power to inspect to determine compliance with this article.

SEC. 7-18-10 RENEWAL. The license holder shall, on an annual basis, file a renewal form ~~prescribed~~ provided by the ~~Plan Commission~~ City Clerk's Office and renewal fee as established by the Common Council prior to the expiration of the license, and such renewal shall be processed in the same manner as the initial application.

SEC. 7-18-11 RECORDS. The Chief of Police shall report to the ~~Plan Commission~~ City Clerk all violations ~~for violation~~ of this Chapter issued to the licensee or any employee, contractor, or agent of the licensee. The ~~Plan Commission~~ City Clerk shall note any such violation on the record of the Vendor convicted.

SEC. 7-18-12 SUSPENSION, REVOCATION, OR NON-RENEWAL OF LICENSE.

(a) A Mobile Vendor or Mobile Food Establishment license may be suspended, revoked, or not renewed by the ~~Plan Commission~~ City Clerk if the applicant or licensee:

(1) made any material omission or materially inaccurate statement in the license application; or

(2) made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in mobile food vending; or

(3) violated any provision of this Chapter; or

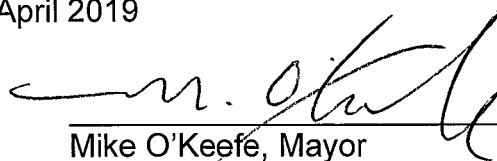
(4) was convicted of any offense which is directly related to the licensee's fitness to engage in mobile vending.

(b) If the Chief of Police, Building Inspector, or an authorized representative of the Fire Department recommends that the ~~Plan Commission~~ City Clerk suspend, revoke, or not renew a mobile food establishment license, or if the ~~Plan Commission~~ City Clerk indicates an intention to suspend, revoke, or not renew the Mobile Vendor or Mobile Food Establishment license, the City Clerk shall, in writing, inform the applicant of the intended non-renewal, suspension or revocation, the reasons, and of the opportunity to request a hearing before the Plan Commission. Such notice shall be sent by certified and regular mail to, or personally served upon, the licensee at least ten (10) days prior to hearing

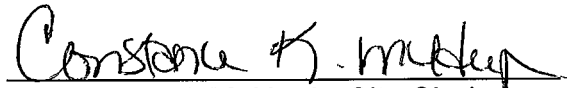
(c) A license is a privilege, the issuance of which is a right granted solely to the ~~Plan Commission~~ City Clerk. The ~~Plan Commission~~ City Clerk shall consider the circumstances, severity and facts of an offense, offenses or pattern of behavior when making the determination to grant, deny, suspend, revoke, or not renew a license.

This ordinance shall take effect upon passage and publication


Passed and adopted this 8th day of April 2019


Mike O'Keefe, Mayor

ATTEST:


Constance K. McHugh, City Clerk

Approved as to form:


Michael P. Herbrand, City Attorney