

..Number
220413

..Version
PROPOSED SUBSTITUTE

...Reference
160363, 170737

..Sponsor
ALD. SPIKER

..Title
A substitute ordinance relating to regulations for the parking and operation of food peddler vehicles.

..Sections
68-1-20 am
68-1-24 am
68-37-1 rc
68-37-5.5 cr
80-8 am
80-44-1 rc
92-3-2-c am
101-23-9.5 cr
101-23-9.6 cr
101-34-2-m cr
101-34-7-n cr
115-45 am
115-45-1 am
115-45-2-c rc
115-45-3.5 cr
115-45-4 rc

..Analysis

This ordinance:

1. Adds food peddler vehicle to the definition of a food establishment.
2. Adds mobile or transient retail food establishment to the definition of food peddler vehicle.
3. Provides that food peddler vehicles shall not be operated between 3 a.m. and 6 a.m. Monday through Friday, or between 3:30 a.m. and 6 a.m. Saturday and Sunday.
4. Creates two types of limited operation food peddler vehicle zones. A Type 1 zone limits time by providing that a food peddler vehicle parked in that zone shall not be operated between 1 a.m. and 6 a.m. and shall not be parked in the zone for more than six hours in a 12-hour period. A Type 2 zone limits density by

providing that a certain number of food peddler vehicles may be parked on a block face in that zone.

5. Establishes the application process for food peddler vehicles seeking a parking space in a Type 2 limited operation food peddler vehicle zone.
6. Provides that the food peddler vehicle policy shall be reviewed annually.
7. Requires a food peddler vehicle operator to provide trash receptacles for patrons, and monitor and pick up litter at regular intervals during operations and when departing.
8. Prohibits a food peddler vehicle operator from dumping any quantity of liquid waste.
9. Provides that a food peddler vehicle shall be subject to nuisance regulations.
10. Provides that any person who holds a food peddler vehicle license that is licensed by another municipality or the state is not exempt from obtaining a mobile seller's license.
11. Prohibits food peddler vehicles from parking within 50 feet of a restaurant without a drive-through facility, with the option to waive this restriction by council approval.
12. Permits the Common Council to waive food peddler vehicle parking restrictions by motion.
13. Increases the minimum forfeiture for violating any provision relating to selling articles from parked vehicles from \$5 to \$50, and the maximum from \$50 to \$500.
14. Provides that the department of public works – parking enforcement may enforce the parking regulations governing food peddler vehicles.
15. Removes the existing ban for food peddler vehicles on Lincoln Avenue, established by Common Council File Numbers 160363 and 170737.
16. Establishes a Type I Time-Limited Food Peddler Vehicle Zone.
17. Establishes a Type 2 Density-Limited Food Peddler Vehicle Zone.
18. Provides that the department of public works, department of neighborhood services, and police department shall work in consultation with the common council to establish a noise and lighting nuisance standard by May 1, 2024, for presentation at the annual review of this ordinance.

..Body

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 68-1-20 of the code is amended to read:

68-1. Definitions.

20. FOOD ESTABLISHMENT shall have the meaning provided ~~[[in ch. DHS 196, Appendix,]]~~ >>for “retail food establishment” in ch. ATCP 75,<< Wis. Adm. Code, as amended. This term shall include any restaurant, food peddler >>vehicle<<, micro market, community food program, school, college, university, or temporary food stand.

Part 2. Section 68-1-24 of the code is amended to read:

24. FOOD PEDDLER VEHICLE means any pushed, pedaled, pulled or motorized vehicle from which food is prepared or sold >>and includes any mobile or transient retail food establishment licensed under s. ATCP 75.06, Wis. Adm. Code <<.

Part 3. Section 68-37-1 of the code is repealed and recreated to read:

68-37. Food Peddlers.

1. SALES ON THE PUBLIC RIGHT-OF-WAY. a. Findings. The common council finds food peddler vehicles parked on the public right-of-way in areas where there is a high concentration of traffic and pedestrian density jeopardize the safety of pedestrians and drivers, and dangerously increase traffic congestion. The common council further finds limiting the locations and times these vehicles may park on the public right-of-way in specified areas contributes to public safety. The common council shall review annually the ordinances relating to food peddler vehicles. It is the intent of the common council to work in cooperation with the police department, health department, and department of public works to administer its food peddler vehicle program.

b. Definition. For purposes of this subsection, “limited operation food peddler vehicle zone” means a portion of a public right-of-way designated by the common council for parking of food peddler vehicles subject to specified limitations. A limited operation food peddler vehicle zone shall be recorded on a map that may be found in the common council proceedings. The official record shall be on file in the city clerk’s office.

c. Locations Restrictions.

c-1. Public Right-of-way. All sales shall be made on the public right-of-way directly from a food peddler vehicle or a carried container unless one of the following exemptions is met:

c-1-a. A food peddler is selling food at the invitation of a business owner on private property provided all sales are made only to employees of the business and not to the general public.

c-1-b. A food peddler is issued an occupancy permit by the department of neighborhood services allowing food sales by the food peddler on a private property.

d. Time Restrictions. A food peddler shall not offer for sale or sell food between 3 a.m. and 6 a.m., Monday through Friday, or between 3:30 a.m. and 6 a.m. on Saturday and Sunday.

e. Limited Operation Food Peddler Vehicle Zone. The department of public works shall mark a limited operation food peddler vehicle zone by either posting a sign or painting the designated area.

e-1. Type 1, Time-Limited Food Peddler Vehicle Zone. Notwithstanding sub. d, a food peddler vehicle that is parked in a type 1 limited operation food peddler vehicle zone shall not:

e-1-a. Offer for sale or sell food between 1 a.m. and 6 a.m.

e-1-b. Park in that zone for more than 6 hours within a 12-hour time period.

e-2. Type 2, Density-Limited Food Peddler Vehicle Zone. The maximum number of food peddler vehicles allowed on a block face in a type 2 limited operation food peddler vehicle zone shall be determined for that specific block based upon density and traffic safety, as determined by the common council in consultation with the department of public works and the police department.

e-2-a. Application. Application for a parking space in a type 2 limited operation food peddler vehicle zone shall be made with the licensing division using an application established for that purpose. In the first year this ordinance is in effect, applications shall be filed no later than July 1, 2023, and shall be filed no later than March 1 of each year thereafter. If granted a parking space, the licensing division shall notify the applicant of the assignment, and the applicant shall accept the parking space in writing within 10 calendar days of receiving notification of the assignment or shall forfeit the assignment. Only one parking space shall be assigned per food peddler vehicle. No food peddler vehicle may be assigned a space in more than one zone. Parking space assignments may not be transferred.

e-2-b. Parking Space Assignment Seniority. Parking space assignment shall be determined by seniority, calculated by counting the number of years a food peddler has operated in the zone for which the applicant is applying as reported on their itinerary. Spaces shall be assigned to applicants in order of seniority until all applicants have been assigned a parking space or until all parking spaces are assigned. If applicants remain after all parking spaces are assigned, a waiting list shall be created using the same seniority system.

e-2-c. Additional Points. One year of seniority shall be added for a vehicle that is all of the following: 12 feet or less in length, 11 feet or less in height, and 7 feet or less in width, including wheels and all extensions, counter space, foldouts, awnings, or other contrivances attached to the main body of the food peddler vehicle.

e-2-d. Tie. If more than one food peddler has the same number of years of seniority, this tie shall be broken using the following criteria, considered in order:

e-2-d-1. Whichever food peddler has been licensed by the City the longest.

e-2-d-2. Whichever food peddler's average food establishment grade is higher, as determined by the health department pursuant to s. 68-9-7.

e-2-d-3. Whichever applicant has received the fewest demerits for being disciplined by the city for offenses relating to the operation of food peddler vehicles. Each warning letter from the licenses committee shall count as one demerit. Each suspension of more than 10 days or revocation shall count as 5 demerits.

e-2-d-4. A game of chance administered by the license division.

e-2-e. Waiting List. Late applicants and food peddlers who forfeit their parking space as provided in subd. e-2-a shall be placed at the bottom of any waiting list. Any parking space that becomes available after parking space assignments have been made shall be offered to the highest-ranking food peddler on the waiting list.

f. Special Permission. The common council may grant permission to a food peddler to park a food peddler vehicle and offer for sale or sell food at a location, on a date, and during a time period not otherwise authorized by this subsection.

Part 4. Section 68-37-5.5 of the code is created to read:

5.5. LITTER CONTROL. A food peddler operating from a food peddler vehicle shall provide a sufficient number and capacity of litter receptacles adjacent to the peddler's point of sale, and within any area patrons may reasonably be expected to congregate while eating. A food peddler shall:

- a. Regularly monitor any area patrons may reasonably be expected to congregate while eating during operations, and collect litter found on sidewalks and the public right-of-way, regardless of the source of the litter.
- b. Promptly empty litter receptacles whenever full to minimize litter on sidewalks and the public right-of-way.
- c. Return litter receptacles and litter collected to a home base kitchen at the end of each day's operations and properly dispose of collected litter.

Part 5. Section 80-8 of the code is amended to read:

80-8. Notice to Abate Nuisance. It shall be the duty of the commissioner to give notice in writing to the person, firm or corporation owning, occupying, in charge or control of any premises >>or vehicle<< wherein a public nuisance shall be, to forthwith abate and remove the same; and any premises or conditions so described in ss. 80-6 to 80-7 which shall be so maintained or permitted to exist for a period of 2 hours after reasonable notice in writing, signed by the commissioner, shall have been given to the person, firm or corporation owning, occupying, in charge or control of the same, are declared to be public nuisances which shall be forthwith abated.

Part 6. Section 80-44-1 of the code is repealed and recreated to read:

80-44. Dumping. 1. DEFINITION. In this section, "dumping" means either of the following:

- a. Depositing solid waste on public or private property, as defined in s. 79-1-12 in an amount greater than the capacity of a standard 20-gallon container without the consent of the property owner.
- b. Depositing liquid waste on public or private property, as defined in s. 79-1-6 in any amount by a food peddler or by the operator of a food peddler vehicle without the consent of the property owner.

Part 7. Section 92-3-2-c of the code is amended to read:

92-3. License Required; Exceptions.

2. EXCEPTIONS.

c. Any person solely selling food and licensed under ch. 68, or exempted from licensing under ch. 68. >>This exemption does not apply to any food peddler vehicle licensed by another municipality or mobile or transient retail food establishment licensed by the state.<<

Part 8. Section 101-23-9.5 of the code is created to read:

101-23. Erection of Parking Signs.

9.5. FOOD PEDDLER VEHICLE ZONE. a. Limited operation food peddler vehicle zones, as defined in s. 68-37-1-b, shall be established by the common council subject to the following regulations:

a-1. Width of Roadway. Limited operation food peddler vehicle zones shall be confined to places alongside the curb and along the center of the street where the roadway, exclusive of the sidewalk, is 35 feet in width or more.

a-2. Designation. The location of limited operation food peddler vehicle zones shall be designated by signs attached to posts adjacent to the zones. The location of food peddler vehicle spaces on a block face within a Type 2 limited operation food peddler vehicle zone shall be determined by the department of public works in consultation with the local council member and the police department. These spaces shall be marked with signage or paint markings.

a-3. Time Limit in Type 1 Time-Limited Zone. A food peddler vehicle shall not park in a Type 1 time-limited food peddler vehicle zone more than 6 hours in a 12-hour period, and shall park in the zone only during the hours of operation set forth on the sign.

a-4. For Food Peddler Vehicles Only. No person shall park, stop or leave standing any vehicle in a Type 2 density-limited food peddler vehicle parking space except a food peddler vehicle operating under a permit issued under s. 68-37-1-e-2-a.

a-5. Food Peddler Vehicle Parking by Permit Only. No food peddler vehicle may park in a Type 2 density-limited food peddler vehicle zone unless operating under a permit issued under s. 68-37-1-e-2-a and within a designated space.

a-6. Locations. Locations of specific zones are to be found listed in the proceedings of the common council, the official record on file in the city clerk's office and the code on file in the legislative reference bureau.

Part 9. Section 101-23-9.6 of the code is created to read:

9.6. NO PARKING OF FOOD PEDDLER VEHICLES. A food peddler vehicle shall not be left parked in any of the following locations:

a. Within 50 feet of a restaurant without drive-through facility. Notwithstanding the foregoing, this provision may be waived by the common council.

b. Within 300 feet of any entrance to any grade, junior high, or high school, or combination thereof while such school is open to students.

Part 10. Section 101-34-2-m of the code is created to read:

101-34. Stipulation or Contestation Procedure; Nonmoving Traffic Violations.

2. FORFEITURE SCHEDULE.

m. Citations issued for violation of s. 101-23-9.5 and 9.6: \$50 for the first violation, \$100 for the second violation, \$200 for the third violation, and \$450 for the fourth and each subsequent violation.

Part 11. Section 101-34-7-n of the code is created to read:

7. PENALTY.

n. Violations of s. 101-23-9.5 and 9.6: \$50 to \$500.

Part 12. Section 115-45 of the Code relating to Selling Articles from Parked Vehicles, Locations Where Selling Prohibited, is amended by deleting the following:

The north and south sides of W. Lincoln Ave. from S. 27th St./S. Layton Blvd. west to S. 38th St., all the days of the week, including Sundays and holidays.

The north and south sides of W. Lincoln Ave. from S. 20 Street westward to the city limits, all the days of the week, including Sundays and holidays.

Part 13. Section 115-45-1 of the code is amended to read:

115-45. Selling Articles from Parked Vehicles.

1. REGULATIONS. >>a. Findings.<< To help protect the safety of pedestrians and drivers, to help relieve traffic congestion on certain public highways and sidewalks within the city and to provide for the freer flow of traffic, both vehicular and pedestrian, on such highways and sidewalks, it is declared to be unlawful for any operator to park any vehicle on any public highway or sidewalk enumerated specifically or by area or classification in this section during the periods specified, or on any public highway or sidewalk within 300 feet thereof, during such periods for the purpose of offering for sale or selling any articles of any nature whatsoever in a public manner from such vehicle.

>>b. Specific Streets and Highways Where Selling Prohibited. The public highways, sidewalks and areas to which this section applies may be found in the common council proceedings, the official record on file in the city clerk's office, and the code on file in the legislative reference bureau.<<

Part 14. Section 115-45-2-c of the code is repealed and recreated to read:

115-45. Selling Articles from Parked Vehicles.

2. LOCATIONS WHERE SELLING PROHIBITED.

c. Near Restaurants.

c-1. Within 50 feet of a restaurant without drive-through facility, as defined in s. 295-201-501.

c-2. Notwithstanding the foregoing, subd. 1 may be waived by the common council.

Part 15. Section 115-45-4 of the code is repealed and recreated to read:

4. PENALTY. Any person violating this section shall upon conviction forfeit not less than \$50 nor more than \$500 and in default of payment shall be imprisoned as provided by law.

Part 16. The following Limited Operation Food Peddler Vehicle Zones are established as described in the attachments to this file.

1. A Downtown Type 1 Time-Limited Food Peddler Vehicle Zone.

2. A Burnham Park Type 2 Density-Limited Food Peddler Vehicle Zone.

Part 17.

The department of public works, department of neighborhood services, and police department shall work in consultation with the common council to establish a noise and lighting nuisance standard by May 1, 2023, for presentation at the annual review of this ordinance.

..LRB
APPROVED AS TO FORM

Legislative Reference Bureau
Date: _____

..Attorney
IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney
Date: _____

..Requestor

..Drafter

LRB 177966-2.5c
Tea B. Norfolk
5/30/2023