

## ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE to repeal and recreate Chapter 10, Article XVI of the Code of Ordinances of the City of La Crosse relating to Mobile Sellers, Farmers Markets, and Trade Shows.

THE COMMON COUNCIL of the City of La Crosse do ordain as follows:

SECTION I: Chapter 10, Article XVI, is hereby repealed and recreated as follows:

## ARTICLE XVI. – MOBILE SELLERS, FARMERS MARKETS, AND TRADE SHOWS

## DIVISION 1. - GENERALLY

## Sec. 10-756. - 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:

*Charitable purpose* means a benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare, advocacy, public health, environmental conservation, civic, or other eleemosynary objective.

*Contribution* means a monetary gift (as of money or service) made to some cause; a donation, offering, or benefaction.

*Direct seller* means any person who sells goods and/or services and/or takes sale orders for the later delivery of goods on any public way or door-to-door and shall include, but not be limited to, canvassers, peddlers, and solicitors.

*Door-to-door* means selling products and/or services at potential customers residences or workplaces.

*Downtown area* means the area bounded by Cass Street, 7<sup>th</sup> Street, La Crosse Street, and the Mississippi River.

*Farmers Market* means a gathering of two (2) or more persons operating as mobile sellers upon a premise, for a period not to exceed seven (7) consecutive days, who are displaying and/or selling either products of the farm or garden and commercially processed foods, household products, crafts, and handmade items, and that meets all of the following conditions:

- (1) Each merchant occupies a separate sales location and identifies said merchant to the public as a separate merchant.
- (2) The farmer's market is operated under one name and at one address and is under the control of the license holder.
- (3) The license holder collects the information identified in section 10-771(1)(a), (b), (c), (f), and (g) and (2)(b) for each seller operating under the license.

*Goods* means and includes personal property of any kind and shall include goods provided incidental to services offered or sold.

*Mobile Sellers* means direct sellers and transient merchants.

*Occasional* means no more than three (3) consecutive days and no more than three (3) occurrences in one (1) calendar year.

*Permanent merchant* means a merchant who has maintained a permanent retail location in La Crosse County and maintained consistent business hours open to the public for at least the six (6) months preceding the date of application or has resided in the City of La Crosse and now does business from the person's residence.

*Person* means any natural person, firm, corporation, association, club, partnership, society, or any other organization of every nature whatsoever.

*Public way* means sidewalks and streets.

*Services* means and includes, but not be limited to, any act, work, assistance, advice, or consultations provided for another for pay or other consideration.

*Solicitor* means any person who solicits or asks for contributions for any purpose or engages in an activity to solicit or ask for contributions for any purpose.

*Trade show* means a gathering of two (2) or more persons operating as mobile sellers upon one premises, for a period not to exceed seven (7) consecutive days, who are of similar industry and are displaying and/or selling products and services, and that meets all of the following conditions:

- (1) Each merchant occupies a separate sales location and identifies said merchant to the public as a separate merchant.
- (2) The trade show is operated under one name and at one address and is under the control of the trade show license holder.
- (3) The license holder collects the information identified in section 10-771(1)(a), (b), (c), (f), and (g) and (2)(b) for each seller operating under the license.

*Transient merchant* means any person without a permanent place of business in the County of La Crosse who engages in the temporary business of selling or delivering goods and/or services away from a permanent place of business at any fixed location temporarily.

#### Sec. 10-757. - Exemptions.

Except as otherwise provided, the following shall be exempt from the provisions of this article:

- (1) The delivery of goods to regular customers on established routes.
- (2) The sale of goods at wholesale to dealers in such goods.
- (3) The sale of agricultural products which such person has grown within the state of Wisconsin and so long as said person is licensed with the appropriate state or local agency. This exception does not include sales in the public way or door-to-door.
- (4) The sale of Christmas trees, wreaths, or other fresh greenery associated with the Christmas season which are grown in the state of Wisconsin. This exception does not include sales in the public way or door-to-door.
- (5) A permanent merchant that places items sold directly outside of their place of business or for sales on other private property. This exception does not include sales in the public way or door-to-door.
- (6) A home visit specifically requested by the buyer.
- (7) The sale of arts or crafts, whether paintings, drawings, photographs, pottery, or similar works of art, so long as the creations are sold by the creating artist. This exception does not include sales in the public way or door-to-door.
- (8) A sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law.
- (9) Any City resident under the age of nineteen (19) years selling a product, service, or ticket promoted and sponsored by a school or youth service, religious, nonprofit, or charitable organization located with the County of La Crosse having an individual item cost of \$25.00 or less.

- (10) Any charitable organization established for a charitable purpose and registered with the state of Wisconsin; provided that there is submitted to the City Clerk proof that such charitable organization is registered. All persons exempt under this subsection shall be required to comply with the applicable regulations. Any charitable organization not registered with the state of Wisconsin shall be required to obtain a license under this section.
- (11) Sales conducted at a trade show, flea market, or convention being held at the La Crosse Center or upon any premises for which a trade show license has been issued.
- (12) Any person engaged in political or fundraising activities for a campaign, campaign committee, or political organization duly registered with a federal, state, county, or city election board.
- (13) The sale of goods at a seminar or convention when such goods are directly related to the content or purpose of the seminar (i.e., books, tapes, etc.) and that are sold by the person providing the seminar.
- (14) The sale of goods on the grounds of a permitted special event pursuant to Chapter 39 with permission from event organizers. This exception does not apply to mobile sales along a parade route.
- (15) Any person operating an occasional garage or yard sale.
- (16) Solicitation of food products when part of an advertised food drive for charitable purposes.
- (17) Food business sales licensed as an Outdoor Food Stand/Mobile Food Unit pursuant to Chapter 10, Article X.
- (18) Secondhand sales licensed as a Secondhand Dealer/Mall or Flea Market pursuant to Chapter 10, Article XVII.

Sec. 10-758. - Enforcement.

The enforcement of this article shall be under the jurisdiction of the Police Department, who shall have the power to inspect to determine compliance with this article.

Sec. 10-759. - Location Restrictions.

Licensed mobile sellers shall not operate upon or in any alley, public grounds or land dedicated to public use or in any part there. Where mobile sellers are making sales from vehicles operating in any street, all traffic and parking regulations shall be observed, and no unit shall impede the free use of such street. No sales shall be made from a vehicle except from the curbside of said vehicle. No licensed mobile seller shall be upon any street used as a parade route between the time one-half hour immediately preceding the commencement of any scheduled parade until after the conclusion of any scheduled parade. Where mobile sellers are operating on any sidewalk, no seller shall impede the free use of such sidewalk and shall not have any exclusive right to any stationary location thereon.

No mobile seller shall operate on property within a public park of the City unless authorized to do so by the Parks and Recreation, Forestry, Facilities and Grounds.

For the purpose of this subsection, the Police Department may limit mobile sales in any public or private property when the area is deemed congested.

Sec. 10-760. - Regulations and restrictions.

- (a) A mobile seller shall:
  - (1) Obtain any other license(s) necessary, including, but not limited to, a Wisconsin seller's permit prior to applying for the City license and adhere to the requirements of any such other license.
  - (2) Carry their license with them while engaged in licensed activities and shall display such licenses to any police officer or citizen upon request. Direct sellers shall, at all times while operating, wear the City-issued ID badge so that it is visible.
  - (3) Obtain permission from the property owner or lessee of any private property for which mobile sales are conducted.
  - (4) Remove all sales equipment from public way during times when vending is prohibited.

- (b) A mobile seller shall not:
- (1) Block or restrict an individual's access to a business or residential doorway.
  - (2) Sell or be in operation between the hours of 9:00 p.m. and 6:00 a.m. except that direct sellers going door-to-door to any location shall not sell before 9:00 a.m. or after 8:00 p.m.
  - (3) Call at any dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning, call at the rear door of any dwelling place (unless directed to do so), nor shall any mobile seller remain on any premises after being asked to leave by the owner/occupant or other person having authority over such premises.
  - (4) Misrepresent or make false, deceptive, or misleading statements concerning the quality, quantity or character of any goods offered for sale, the purpose of the visit, the licensee's identity, or the identity or the organization the licensee represents. A charitable organization mobile seller shall specifically disclose what portion of the sale price of goods being offered will actually be used for the charitable purpose for which organization is soliciting. Such portion shall be expressed as a percentage of the sale price of the goods.
  - (5) Block or restrict pedestrians on the public way.
  - (6) Make any loud noises nor use audio or video equipment, such as speakers, amplifying device, and video display monitors- if the noise produced is capable of being plainly heard outside a one-hundred-foot radius of the source.
  - (7) Use extension cords to supply power a mobile seller's stand/unit; any stands/units must be self-powered.
  - (8) Use any of the amenities, including, but not limited to, benches, flowers, planters, trees, shelters, and light poles, for the display of merchandise or attachment of any equipment or advertising materials.
  - (9) Allow rubbish or litter to accumulate in or around the area in which the licensee is conducting business.
  - (10) Allow sales of any type of device that expels a projectile, such as, but not limited to, silly string, marshmallows, or other type of projectiles are prohibited when selling along parade routes.
  - (11) Sell within 300 feet of school grounds unless part of a non-profit or civic event on school grounds with permission from the respective school except in the downtown area.
  - (12) Sell within 100 feet of a permanent retail merchant, during its operating hours, without written permission from said merchant; unless said vendor is operating within 50 feet of its own permanent business establishment. To determine footage, measurement shall be taken from the merchant's main public entrance door.
  - (13) Sell in the same location for more than five (5) hours in any one day unless:
    - a. Vending on private property either owned or leased by vendor.
    - b. Granted approval by the Parks and Recreation, Forestry, Facilities and Grounds pursuant to section 10-759 to sell in a public park of the City.

Sec. 10-761. - Disclosure requirements and right to cancel.

- (a) After the initial greeting and before any other statement is made to a prospective customer, a licensee shall expressly disclose their name, the name of the company or organization the licensee is affiliated with, if any, and the identity of goods or services the licensee offers to sell.
- (b) If any sale of goods and/or service is made by a licensee, or any sales orders for the later delivery of goods is taken by the licensee, the buyer shall have the right to cancel said transaction if it involves the extension of credit or is a cash transaction of more than \$25.00, in accordance with the procedure as set forth in Wis. Stat. § 423.203; the licensee shall give the buyer two copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of Wis. Stat. § 423.203(1)(a), (b) and (c), (2), and (3).
- (c) If a licensee takes a sales order for the later delivery of goods, such licensee shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance whether full, partial or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.

Secs. 10-762—10-769. - Reserved.

## DIVISION 2. - LICENSE

Sec. 10-770. - License required.

No person shall engage in the business of mobile seller, farmers market, or trade show within the City of La Crosse without first obtaining a license in compliance with the provisions of this division.

No license shall be granted to a person under sixteen (16) years of age unless a street trade permit is obtained pursuant to Wis. Stat. §103.25.

Sec. 10-771. - Application and permits.

A license shall only be granted when the following requirements are satisfied:

- (1) Any person requiring a license under this division shall make an application in writing upon forms furnished by the City Clerk which shall require the following information:
  - a. Name, permanent address, and telephone number and temporary address of applicant, if any.
  - b. Name, address, and telephone number of the person, firm, association, or corporation that said person represents or is employed by, or whose merchandise, services, or donations are being taken for.
  - c. Place where the applicant can be contacted for at least six (6) months after leaving the City of La Crosse.
  - d. Date of birth, height, weight, color of hair and eyes.
  - e. Temporary address and telephone number from which business will be conducted, if any.
  - f. Nature of business to be conducted and a brief description of the goods offered or services, if any.
  - g. Proposed method of delivery of goods, if applicable.
  - h. Make, model, and license number of any vehicle to be used by the applicant in the conduct of the applicant's business.
  - i. Last cities, villages, towns, not to exceed five (5), where the applicant conducted similar business.
  - j. Statement as to whether the applicant has been convicted of any crime or ordinance violation related to the applicant's business or solicitation within the last five (5) years, the nature of the offense and the place of conviction.
  - k. Dates, time period, and places where sale of goods will take place.
- (2) Applicants shall present to the City Clerk for examination and/or to be photocopied:
  - a. A valid driver's license or some other proof of identity as may be reasonably required bearing the applicant's photograph.
  - b. A Wisconsin seller's permit as required by Wis. Stats. sec. 77.52.
  - c. A local certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by State or local authorities.
  - d. Vehicle certificate of registration/licensing/insurance if mobile sales are conducted from a vehicle.
- (3) Proof that insurance has been obtained in accordance with section 2-2.
- (4) The application must be received at least fifteen (15) days in advance of any license being issued.

Sec. 10-772. – License duration/fee.

- (a) Temporary. A temporary permit shall be valid for a period of ninety (90) consecutive days from its issuance, unless sooner revoked.
- (b) Annual. An annual permit shall be valid through December 31 of the year of its issuance, unless sooner revoked. Direct sellers going door-to-door to any location are not eligible for an annual license.
- (c) Fee. At the time of the application, a nonrefundable fee in the amount established by resolution shall be paid to the Director of Finance/Treasurer to cover the costs of investigation and processing such application and necessary identification card(s).
  - (1) Any person who obtains a permit for mobile sales may have one or more employees operate under that person's license. All employees shall also be subject to investigation under section 10-773. An individual is an employee if the individual is involved in the material details of how sales activities are to be conducted by the permit holder, are paid by wage, salary, or commission by the permit holder and have no personal monetary investment in the sales activity.
  - (2) All direct sellers or employees of the permit holder who conduct sales activities by going door-to-door to any business or residence, or are otherwise not operating at a single, fixed location, must obtain an identification card that shall be on their person at all times while conducting sales activities.
- (f) The operator of a farmer's market or trade show, as defined herein, may apply for a farmer's market or trade show license that covers all mobile sellers participating in the farmer's market/trade show.
- (g) At the time of application for a farmer's market or trade show license, a fee in the amount established by resolution shall be paid to the Director of Finance/Treasurer to cover the cost of investigating and processing such application. A farmer's market or trade show license shall be valid for the period from January 1 through December 31, inclusive, of the year in which the license was issued. Licenses issued after January 1 in any year shall expire on December 31 of the year in which issued. License fees for farmer's market or trade show licenses issued after January 1 in any year shall not be pro-rated.

Sec. 10-773. - Investigation.

- (a) Upon receipt of each application from the City Clerk, the La Crosse Police Department shall conduct an investigation of the statements made on such application.
- (b) The City Clerk shall refuse to license the applicant if it is determined, pursuant to the investigation referenced in subsection (a) of this section, that:
  - (1) the application contains any material omission or materially inaccurate statement;
  - (2) complaints of a material nature have been received against the applicant by authorities in the last cities, villages, and towns, in which the applicant conducted similar business;
  - (3) the applicant was convicted of a crime, statutory ordinance, or ordinance violation the nature of which is directly related to the applicant's fitness to engage in the conduct for which the license is requested;
  - (4) the applicant failed to comply with any applicable provision of this section;
  - (5) or the applicant failed to pay the fees required for the license.

Sec. 10-774. - Expiration; renewal; transfer.

The City Clerk shall date all licenses issued hereunder and specify thereon the date of expiration. Applications for renewals shall be handled in the same manner as original applications. Licenses issued under this section are personal and may not be transferred.

Sec. 10-775. – Revocation, suspension, or non-renewal.

The issuance of a mobile seller permit is conditional at all times. A permit may be revoked, suspended, or not renewed for violation of any provision of this chapter, or a violation of a statute, ordinance, or regulation substantially related to the permitted activity or when necessary to protect the

public health, safety, or welfare; or to prevent a nuisance from developing or continuing; or in emergency situations. Written notice of the hearing shall be served personally on the applicant or licensee at least seventy-two (72) hours prior to the time set for the hearing; such notice shall contain the time and place of hearing and a statement of the acts upon which the hearing will be based.

Sec. 10-776. - Appeal.

A revocation, suspension, or denial of a permit may appeal the denial to the Judiciary and Administration Committee, which shall make a recommendation to the entire Council after providing the applicant with an opportunity for a hearing.

An applicant whose permit has been denied by the Police Department or whose appeal has been denied by the Common Council may not apply for a permit for a period of one year from the date of the original application.

Secs. 10-777—10-824. - Reserved.

SECTION II: Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this division shall not be affected.

SECTION III: This ordinance shall take effect and be in force from and after its passage and publication.

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Mitch Reynolds, Mayor

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Nikki M. Elsen, City Clerk

Passed:  
Approved:  
Published: