

**Ordinance No. 1-16-674  
Monona Common Council**

**AN ORDINANCE AMENDING CHAPTER 7-13 OF THE CODE OF ORDINANCES  
CONCERNING TRANSIENT MERCHANTS**

**WHEREAS**, the City has recently experienced an increase in the number of transient food establishments desiring to do business on public and private property within the City.

**WHEREAS**, the operation of transient food establishments poses risks of foodborne illness and interference with vehicular and pedestrian traffic if they are not operated in a safe and sanitary manner.

**WHEREAS**, the Common Council finds it necessary and in the public interest to amend Chapter 7-13 to regulate and license transient food establishments doing business within the City.

**NOW, THEREFORE**, the Common Council of the City of Monona, Dane County, Wisconsin, do ordain as follows:

**SECTION 1.** Section 7-13 of the Code of Ordinances is hereby amended to read as stated in the attached exhibit.

**SECTION 2.** The Fee Schedule, section 7-15-1 of the Code of Ordinances, is hereby amended to add the following fees, which are hereby established as the fee for the listed activity:

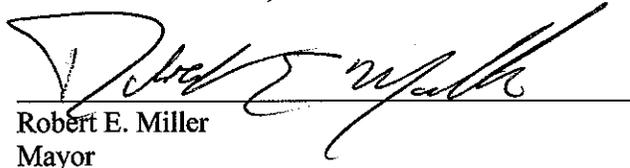
7-13-1	Transient Merchant	\$15.00 annually
7-13-1	Transient Merchant (Mobile Food Establishment)	\$50.00 annually

**SECTION 3.** All other provisions of Code of Ordinances not specifically amended herein shall remain unmodified and in full force and effect.

**SECTION 4.** This ordinance shall take effect upon passage and publication as provided by law.

Adopted this 19<sup>th</sup> day of January, 2016.

BY ORDER OF THE CITY COUNCIL  
CITY OF MONONA, WISCONSIN

  
\_\_\_\_\_  
Robert E. Miller  
Mayor

ATTEST:

Joan Andrusz  
\_\_\_\_\_  
Joan Andrusz  
City Clerk

Approval Recommended By: License Review Committee – 1/12/16  
Drafted By: William S. Cole, City Attorney – 12/24/15  
Approved As To Form By: William S. Cole, City Attorney – 12/24/15

## Chapter 13

### Regulation of Transient Merchants

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#### Sec. 7-13-1 License Required.

It shall be unlawful for any Transient Merchant to engage in sales within the City of Monona without being registered, and receiving a Transient Merchant's license, for that purpose as provided herein. All licenses granted under this Chapter shall be valid from the date of issuance through December 31 of the current year. Licenses may be renewed annually and expire on December 31<sup>st</sup> of each year.

#### Sec. 7-13-2 Definitions.

- (a) **Charitable Organization** shall include any benevolent, philanthropic, patriotic, or eleemosynary person, partnership, association or corporation, or one purporting to be such.
- (b) **Chief of Police** shall mean the City Chief of Police or his/her duly appointed officer.
- (c) **Clerk** shall mean the City Clerk or his/her duly appointed agent.
- (d) **Food** means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
- (e) **Merchandise** shall include personal property of any kind, and shall include merchandise, goods, or materials provided incidental to services offered or sold. The sale of merchandise includes donations required by the seller for the retention of goods by a donor or prospective customer.
- (f) **Mobile Food Establishment** means a Transient Merchant who serves or sells food intended for human consumption from a movable vehicle, push cart, trailer, boat, or temporary structure which periodically or continuously changes location.
- (g) **Permanent Merchant** means one who, for at least one year prior to the consideration of the application of this ordinance to said merchant a) has continuously operated an established place of business in Dane County or b) has continuously resided in Dane County and now does business from his/her residence.
- (h) **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.
- (i) **Transient Merchant** means one who engages in the sale of merchandise at any place in the City of Monona temporarily, and who does not intend to become and does not become a permanent merchant of the City. For purposes of this section, sale of merchandise includes a sale in which the personal services rendered upon or in connection with the merchandise constitutes the greatest part of value for the price received. Transient Merchant shall also include any one engaged in the sale of food, ice cream, candy, beef or other merchandise out of a vehicle.

#### Sec. 7-13-3 Exemptions.

The following shall be exempt from all the provisions of this chapter:

- (a) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes;
- (b) Any person selling goods at wholesale to dealers in such goods;
- (c) Any person selling agricultural products which such person has grown;
- (d) Any permanent merchant or employee thereof who takes orders at the home of the buyer for merchandise regularly offered for sale by such merchant within this county and who delivers such merchandise in their regular course of business;
- (e) Any person who has an established place of business where the merchandise being sold is offered for sale on a regular basis, and in which the buyer has initiated contact with, and specifically requested, a home visit by said person;
- (f) Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer;
- (g) Any person selling or offering for sale a service unconnected with the sale or offering for sale of merchandise;
- (h) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law;
- (i) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization, provided that there is submitted to the Clerk proof that such charitable organization is registered under Sec. 440.41, Wis. Stats. Any charitable organization engaging in the sale of merchandise and not registered under Sec. 440.41, Wis. Stats., or which is exempt from the statute's requirements, shall be required to comply with this chapter;
- (j) Any person who claims to be a permanent merchant, but against whom a complaint has been made to the Chief of Police or Clerk that such person is a Transient Merchant; provided that there is submitted to the Chief of Police or Clerk proof that such person has leased for at least one year, or purchased, the premises from which he/she has conducted business in the City for at least one year prior to the date the complaint was made;
- (k) Any individual licensed by an examining board as defined in Section 15.0(7), Wis. Stats.;
- (l) This chapter does not apply to Transient Merchants while doing business at special events authorized by the City Council;
- (m) Any group or individual selling merchandise for the primary purpose of raising funds for a public or private school engaged in the education of children from kindergarten through high school or any extracurricular group affiliated with such a school;
- (n) Any family member holding an estate sale of the personal property of a deceased member of their family;
- (o) Any individual holding a garage sale as provided by Section 13-1-44;
- (p) Any individual engaged in proselytizing, canvassing or pamphleteering regarding political or religious views and not selling any merchandise or soliciting any funds or services.

#### **Sec. 7-13-4 Application.**

- (a) **INFORMATION.** Applicants for a license must complete and return to the Clerk an application form furnished by the Clerk which shall require the following information:
  - (1) Name, permanent address and telephone number, and temporary address, if any;
  - (2) Copy of a current driver license or other form of identification that includes a photograph of the applicant;
  - (3) Name, address and telephone number of the person, firm, association or corporation that the Transient Merchant represents or is employed by, or whose merchandise is being sold;
  - (4) Temporary address and telephone number from which business will be conducted, if any;
  - (5) Documentation showing that the applicant has permission to be at that location;
  - (6) Nature of business to be conducted and a brief description of the merchandise, and any services offered;
  - (7) Proposed methods of delivery of merchandise, if applicable;
  - (8) Make, model and license number of any vehicle to be used by applicant in the conduct of his/her business;
  - (9) Most recent cities, villages, town, not to exceed three, where applicant conducted his/her business;

- (10) Place where applicant can be contacted for at least seven (7) days after leaving this City;
  - (11) Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's Transient Merchant business within the last five (5) years, and the nature of the offense and the place of conviction.
  - (12) Mobile Food Establishments shall provide the following additional information:
    - i. A description of all food to be offered for sale;
    - ii. The location(s) where business will be conducted;
    - iii. The dates and times business will be conducted.
    - iv. The address of the Service Base from which the operation will be supported.
- (b) DOCUMENTATION. Applicants shall include with the applications a true and complete copy of the following:
- (1) A state issued driver's license, or other proof of identity containing a photograph of the applicant;
  - (2) A state certificate of examination and approval from the sealer of weights and measures for each device utilized which is regulated by Chapter 7-14.
  - (3) A current valid Wisconsin Seller's Permit;
  - (4) A current auto insurance declaration page for coverage in force for the entire license period;
  - (5) Applications for Mobile Food Establishments shall also include the following:
    - i. A current mobile food establishment permit issued by the Wisconsin Department of Health Services, or its designated agent;
    - ii. A current service base permit issued by the Wisconsin Department of Health Services, or its designated agent;
    - iii. Written consent from the owners of all private property upon which it intends to operate.
    - iv. Proof of liability insurance in an amount no less than \$300,000 per incident.
- (c) FEE. At the time the application is filed, a fee shall be paid to the Clerk to cover the cost of processing said application. Each and every member of a group must file a separate application form. The fee for a Transient Merchant's license is nonrefundable and shall be in the amount listed in the Fee Schedule, section 7-15-1.

**Sec. 7-13-5 Investigation.**

- (a) Upon receipt of each application, the Chief of Police or his/her duly appointed officer may immediately make and complete an investigation of the statements made in such application.
- (b) The Clerk 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 material nature have been received against the applicant by authorities in the most recent cities, villages and towns, not exceeding three, in which the applicant conducted similar business; 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 fitness to engage in direct selling; or the applicant failed to comply with any applicable provisions of this chapter.

**Sec. 7-13-6 Appeal.**

Any person refused or denied a license may appeal the denial through the appeal procedure provided by Title IV, Chapter 1.

**Sec. 7-13-7 Regulation of Operations.**

(a) **Prohibited Practices.**

- (1) A Transient Merchant shall be prohibited from: calling at any dwelling or other place between the hours of 9:00 p.m. and 9:00 a.m. except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers", "No Solicitors" or words of similar meaning; calling at the rear door of any dwelling place; or remaining on any premises after being asked to leave by the owner, occupant, or other person having authority over such premises.

- (2) A Transient Merchant shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity, or characteristics of any merchandise offered for sale, the purpose of his/her visit, his/her identity or the identity of the organization he/she represents. A charitable organization Transient Merchant shall specifically disclose what portion of the sale price of the merchandise being offered will actually be used for the charitable purpose for which the organization is soliciting. Said portion shall be expressed as a percentage of the sale price of the merchandise.
  - (3) No Transient Merchant shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.
  - (4) No Transient Merchant shall make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a one-hundred (100) foot radius of the source.
  - (5) No Transient Merchant shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.
- (b) **Disclosure Requirements For Transient Merchants Other Than Mobile Food Establishments.**
- (1) After the initial greeting and before any other statement is made to a prospective customer, a Transient Merchant shall expressly disclose his/her name, the name of the company or organization he/she is affiliated with, if any, and the identity of merchandise or services he/she offers to sell.
  - (2) If any sale of merchandise is made by a Transient Merchant, or any offer for the later delivery of merchandise is taken by the seller, the buyer shall have the right to cancel said transaction in accordance with Section 423.202, Wis. Stats. and any other provision under the law; the seller shall give the buyer two (2) copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of Section 423.203, Wis. Stats.
  - (3) If the Transient Merchant takes a sales order for the later delivery of merchandise, he/she 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.
- (c) Any Transient Merchant engaged in the sale of fireworks, as defined in Section 7-5-1, shall fully comply with the provisions of Title VII, Chapter 5 as well as this chapter.
- (d) **Mobile Food Establishments.** In addition to the provisions of subsection (a), all Mobile Food Establishments operating within the City shall:
- (1) Comply with all applicable requirements of Chapter DHS 196 of the Wisconsin Administrative Code.
  - (2) Operate only between the hours of 7:00 a.m. and 9:00 p.m.
  - (3) Place no seating for consumer consumption of products sold within the public right-of-way.
  - (4) Provide a minimum four foot clearance on sidewalks and rights-of-way for pedestrian access and traffic.
  - (5) When operating in the public right-of-way, serving and dispensing of food products shall be directed toward the sidewalk or terrace area immediately adjacent.
  - (6) Maintain clear access and visibility of cross walks and street corners.
  - (7) Not connect to any public source of electricity, water or sewer.
  - (8) Not use any public property such as light poles or other utility poles, flower planters, trees, or other amenities to attach any ropes, posters, signs, electrical cords, or other objects used in its operations.
  - (9) Keep the area clean and free from litter, garbage, rubble, and debris at all times.
  - (10) Maintain at least one leak-proof container for the deposit of waste, garbage, litter and refuse. When leaving vending area, the mobile vendor and his/her employee(s) shall be responsible for the removal of all litter resulting from its operations.
  - (11) **LOCATIONS OF OPERATION.** Mobile Food Establishments issued a license under this section shall only operate at the following locations:
    - a. **PRIVATE PROPERTY.** On private property for no more than 120 days per calendar year at the same property, provided the operations do not impair traffic flow or obstruct vision for intersecting streets, driveways, sidewalks or other traffic areas. All

operations on private property shall be first approved by the City Planner as consistent with the Zoning Code.

- b. PUBLIC STREET. On any public street which has a speed limit no greater than 25 mph, provided it is parked in a legal parking space greater than 200 feet from the property line of any restaurant, and removed by 10:00 p.m. each day.
- c. OTHER PUBLIC PROPERTY. On any public property other than a public street only as specifically approved in writing by the City Clerk and stated on the issued license.

#### **Sec. 7-13-8 Records.**

The Chief of Police shall report to the Clerk all convictions for violation of this ordinance and the Clerk shall note any such violation on the record of the applicant.

#### **Sec. 7-13-9 Revocation of License.**

- (a) License may be revoked by the License Review Committee after notice and hearing, if the applicant made any material omission or materially inaccurate statement in the application, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in transient sales, violated any provision of this ordinance or was convicted of any crime or ordinance or statutory violation which is directly related to the applicant's fitness to engage in selling.
- (b) Written notice of the hearing shall be served personally or pursuant to Sec. 7-13-4(c) above on the applicant 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. 7-13-10 Penalty.**

Any person adjudged in violation of any provision of this ordinance shall forfeit not less than Ten Dollars (\$10.00) or more than One Thousand Dollars (\$1,000.00) for each violation per day plus costs of prosecution. Each violation shall constitute a separate offense.

#### **Sec. 7-13-11 Severability.**

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a decision of a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and not affect the validity of all other provisions, sections, or portion thereof of the ordinance which shall remain in force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.