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Date: November 25, 2020

To: Plan Commissioners

From: Rodney J. Scheel
Director of Planning & Development

Michael P. Stacey
Zoning Administrator/Assistant Planner

Subject: Agenda Item for the December 14, 2020 Plan Commission Meeting

Discuss potential code amendments to allow mobile food vending on private property.
Due to recent increased interest in mobile food vending, staff has worked with the City Attorney's to draft the provided ordinance amendments.

Currently, mobile food vending on private property is not specifically covered within the zoning code so if there is mobile food vending happening, it essentially happens without any permitting or regulations in place. Mobile food vending is not proposed to be allowed in residential or Central Business District areas (downtown).

Some discussion points are:

- Mobile food vending is seen as a temporary use. Should this be considered a more permanent use? The current proposal is to allow mobile food vending for up to 180 days per calendar year per vendor.
- We are in the process of updating our sign ordinance. What type of signage should be allowed for mobile food vending or temporary uses in general. Currently, temporary uses can have 2 square foot signage placed on private property. Signage on a vehicle is not typically regulated.
- Should a special event licensed by the City also be required to get a zoning permit?

Section 1. – Sec. 78-015 is amended to include the following definitions:

Mobile food vending: See subsection 78-206(9)(j).

Mobile food vending at special events: See subsection 78-206(9)(k).

Mobile food vending vehicle: means a commercially manufactured, self-contained, movable motor vehicle or trailer in which food is cooked, wrapped, packaged, processed, or portioned for services, sale, or distribution. Mobile food vending vehicles do not include vehicles that are used solely to transport or deliver food or a common carrier regulated by the state or federal government.

Mobile food vendor: A person who owns a mobile food vending vehicle or who operates or conducts any activities from a mobile food vending vehicle.

Section 2. – amend 78-105 to allow temporary uses, as needed.

Section 3. Sec. 78-206(9)(a) is amended to read:

(a) *General temporary outdoor sales.*

Description: ~~Includes the~~ The temporary display and sale of any items, on private property and outside the confines of a building, ~~which~~ that is not otherwise ~~permitted as a permitted conditional use, or a special event otherwise~~ regulated by the City Municipal Code. Examples of this land use include but are not limited to: seasonal garden ~~shops~~ sales, ~~tent~~ fireworks sales, vegetable and fruit sales, and Christmas tree sales.~~, bratwurst stands, and up to three garage sales per year.~~

1. *Temporary use regulations*:

   a. ~~The user shall provide a layout of the activities to the director of planning and development for approval prior to any activity.~~ Prior to commencing any activities under this subsection, a site plan of the subject property must be approved by the zoning administrator. The site plan must conform to all applicable requirements of subsection 78-908(3), as determined by the zoning administrator.

   b. The temporary use must be approved under section 78-906.

c. The person seeking approval of the temporary use must obtain, and submit to the zoning administrator, written authorization from the property owner.

d. A temporary use permit issued under this subsection shall be issued for a specified number of days, but no more than 180 consecutive days.

e. A person may be issued a temporary use permit for a particular activity no more than once per calendar year.

f. The display and sale of items shall not be permitted in the public right-of-way nor in any required bufferyard or landscaped area.

g. The temporary use shall not use any required parking for the existing uses of the site.

h. The temporary use shall not impair traffic or pedestrian flow, nor shall it obstruct vision for intersecting streets, driveways, sidewalks or other traffic areas.

i. Signage shall comply with the requirements for temporary signs in subsection 78-811(3).

j. If the temporary use is located on property adjacent to residential property, sales and display activities shall be limited to daylight hours.

k. The temporary use shall not create a nuisance for neighboring properties, including those related to noise, lighting, dust, trash and late operating hours.

Section 4. Sec. 78-206(9)(g) is repealed.

Section 5. Sec. 78-206(9)(j) is created to read:

(j) *Mobile food vending.*

Description: Mobile food vending is the retail sale of food or beverages to the general public from a mobile food vending vehicle. A mobile food vending vehicle may operate in any zoning district except in the Central Business District and residential districts.

1. Regulations:

    a. Prior to commencing any activities under this subsection, a site plan of the subject property must be approved by the zoning administrator. The site plan must conform to all applicable requirements of subsection 78-908(3), as determined by the zoning administrator.

    b. The temporary use must be approved under section 78-906.

    c. The person seeking approval of the temporary use must obtain, and submit to the zoning administrator, written authorization from the property owner.

    d. Mobile food vending shall not be permitted in the public right-of-way nor in any required bufferyard or landscaped area.

    e. A temporary use permit issued under this subsection shall be issued for a specified number of days, but no more than 180 consecutive days.

    f. A person may be issued a temporary use permit for mobile food vending no more than once per calendar year per mobile food vending vehicle.

    g. A mobile food vending vehicle shall not use any required parking for the existing uses of the site.

    h. Mobile food vending shall not impair traffic or pedestrian flow, nor shall it obstruct vision for intersecting streets, driveways, sidewalks or other traffic areas.

    i. Signage shall comply with the requirements for temporary signs in subsection 78-811(3).

    j. Mobile food vending may occur only between the hours of 7:00 a.m. and 9:00 p.m.

    k. Mobile food vending shall not create a nuisance for neighboring properties, including those related to noise, lighting, dust, trash and late operating hours.

l. A mobile food vendor must comply with all food preparation and sanitation regulations of the Wisconsin Food Code and Public Health Madison & Dane County, and each mobile food vending vehicle must be licensed to sell food and beverages by Public Health Madison & Dane County or by the State of Wisconsin.

m. To encourage the success of City-licensed special events or other City-approved events, no mobile food vending vehicle shall be permitted within five hundred (500) feet of the event premises during the hours approved for such event, unless the mobile food vending unit is part of the aforementioned event.

n. Connection of a mobile food vending vehicle to a public source of electricity, water, or sewer is prohibited.

Section 5. Sec. 78-206(9)(k) is created to read:

(k) *Mobile food vending at special events.*

Description: This land use allows the operation of a mobile food vending vehicle in conjunction with a special event licensed under Ch. 14, Art. XVIII and with the authorization of the special event licensee.

1. *Temporary use regulations.*

a. The mobile food vending vehicle must be located on premises controlled by the special event licensee and shall operate in strict conformance with any conditions imposed under the special event license and only during the hours approved for the event.

b. A mobile food vending vendor must comply with all food preparation and sanitation regulations of the Wisconsin Food Code and Public Health Madison & Dane County, and each mobile food vending vehicle must be licensed to sell food and beverages by Public Health Madison & Dane County or by the State of Wisconsin.

Section 6. Sec. 78-906 is amended to read:

(1) Purpose.

(a) The purpose of this section is to provide regulations that govern the procedure and requirements for the review and approval, or denial, of proposed temporary use.

(b) Temporary uses are those uses that have the potential to create undesirable impacts on nearby properties if allowed to develop simply under the general requirements of this chapter. In addition to such potential, temporary uses also have the potential to create undesirable impacts on nearby properties that potentially cannot be determined except on a case-by-case basis. In order to prevent this from occurring, all temporary uses are required to meet certain procedural requirements applicable only to temporary uses, in addition to the general requirements of this chapter and the requirements of the zoning district in which the subject property is located.

~~(c) Land uses which fail to meet one, but not more than one, of the requirements for temporary uses of section 78-206 may be reviewed as a conditional use. (See subsection 78-202(2))~~

(2) *Regulations applicable to all temporary uses.* No public hearing is required to review a temporary use, however, a demonstration that the ~~developer~~ applicant proposes to meet all temporary use requirements of this article must be made at the time of ~~site plan~~ application. Furthermore, no ~~building~~ temporary use permit shall be issued for any ~~development~~ application that does not comply with all requirements of this chapter ~~(see section 78-909)~~. Any temporary use found not to be in compliance with the terms of this chapter shall be considered in violation of this Code and shall be subject to all applicable procedures and penalties.

(3) *Application requirements.* All applications for proposed temporary uses, shall be approved as complete by the zoning administrator prior to ~~certification~~ review of the proposed temporary use. Said complete application shall be comprised of all of the following:

~~(a) A map of the subject property showing all lands for which the temporary use is proposed, and all other lands within 300 feet of the boundaries of the subject property. Said map shall clearly indicate the current zoning of the subject property and its environs, and the jurisdiction(s) which maintains that control. Said map and all its parts and attachments shall be submitted in a form which is clearly reproducible with a photocopier, and shall be at a scale which is not less than one inch equals 800 feet. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided;~~

~~(b) A map, such as the planned land use map, of the generalized location of the subject property in relation to the city as a whole;~~

(c) A written description of the proposed temporary use describing the type of activities~~, buildings, and structures~~ proposed for the subject property and their ~~general~~ specific locations;

(d) ~~The zoning administrator may require a~~ A site plan of the subject property is required. Said site plan shall conform to ~~any and~~ all applicable ~~the~~ requirements of subsection 78-908(3) as determined by the zoning administrator;

(4) *Approval by the zoning administrator.* Approval of a temporary use shall be by the zoning administrator following review of said complete application per subsection (3) above; and

(5) *Fee.* A fee ~~may~~ shall be required for this procedure. Refer to section 78-919.

Mayor Swadley closed the public hearing.

Motion by **Barman** to recommend the Common Council approve the ordinance amendment as presented, 2nd by **Schumacher**.

Motion carried unanimously.

7. **Request by Phil Harrison to discuss the regulations for flags and banners used for commercial signage.**
Phil Harrison explained that they are 2 year residents of Stoughton. They had observed "feather flags" elsewhere and thought they could be put up without a permit.

Commissioner Barman indicated as a local business owner he had previously inquired about "feather flags" for his own business and found they were not allowed. He stated it is a difficult time to invest in permanent signage.

Selsor suggested that Barman should recuse himself from voting on this item.

It was suggested that "sandwich board" type signs are better suited for pedestrian traffic vs. vehicular traffic.

Caravello suggested he may be willing to consider 1 feather flag per business with the message "Open".

There was discussion about possibly allowing one wave banner per lot to be used only when the business is open.

Barman suggested maybe considering one for each building per street frontage so a corner building would be allowed one on each street.

Majewski is concerned about the density of feather flags and suggested maybe one per lot in the downtown area. They should not be allowed in the right of way except in the downtown district.

The Commissioners would like staff to draft language for them to consider at the next meeting. They suggested we may need to include the City Attorney into the discussion.

No motions were made.

8. **Discuss potential zoning code amendments to allow mobile food vending on private property.**
Majewski is ok with 180 days but indicated 90 days may be better. Schumacher indicated support for 90 to 180 days.

Barman indicated Portland, OR has a system where they review mobile vending as part of a site plan. Mobile vending has been incorporated into strategies to encourage business activity in communities.

Mayor Swadley discussed how the Community Affairs/Council Policy Committee has evaluated mobile food vending licensing issues and is not recommending a separate City license. It was recommended mobile food vending be managed through zoning and special event permitting.

It was requested the City Attorney Rachel Synder attend the next meeting to discuss the draft language.

No action taken.

9. Future agenda items.
51 West Development.

Adjournment.
Motion by **Schumacher** to adjourn at 7:30 pm, seconded by **Caravello**. Motion carried unanimously.

Respectfully Submitted,

Rodney Scheel