

COMMITTEE OF THE WHOLE MEETING

The Common Council of the City of Ashland will meet as the Committee of the Whole on **March 9, 2021** immediately following the City Council meeting which begins at **5:30 PM**
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The following items will be considered:

1. Roll Call
2. Council President's Report
3. Administrator's Report
4. Approval of Agenda
5. Discussion Items
 - A. **Discussion and Possible Action Regarding Amending Chapter 889 Transient Merchants, Solicitation in Residential Neighborhoods, and Mobile Concession Street Vendors, Ashland City Ordinances, as Relates to Mobile Concession Vendors** *(Council President)*
 - B. **Continued Discussion and Possible Action Regarding Creating a System for Collection and Analysis of Data Related to the Ashland Police Department** *(Administration)*
 - C. **Discussion and Possible Action Regarding Creating an Ad-Hoc Commission to Research Redistricting in Response to the 2020 Census** *(Mayor)*
6. Adjournment

The City of Ashland does not discriminate on the basis of sex, race, creed, color, national origin, sexual orientation, age or disability in employment or provision of services, programs or activities.

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SUBJECT: Discussion and Possible Action Regarding Amending Chapter 889 Transient Merchants, Solicitation in Residential Neighborhoods, and Mobile Concession Street Vendors, Ashland City Ordinances, as Relates to Mobile Concession Vendors (*Council President*)

RECOMMENDATION: Discussion and Possible Action

DEPARTMENT OF ORIGIN: Council President

CLEARANCES:

EXHIBITS:

1. Chapter 889 Transient Merchants, Solicitation in Residential Neighborhoods, and Mobile Concession Street Vendors
2. City of Ashland Restaurant map, May 2019
3. Various WI Cities Ordinances RE: Vendor Locations

SUMMARY STATEMENT:

This item is intended to begin discussion regarding Mobile Concession/Food Vendors licenses in the City of Ashland, and take action as Council desires.

The Council President received an email from one local business owner who serves food and beverages regarding mobile food vendor regulations, asking to increase the distance that these vendors are required to maintain from a brick and mortar food or like establishment. The proposed change was to increase the distance from 300 feet to 1000 yards (3000 feet).

A small survey of WI cities and towns showed distances stated for a mobile food concession vendor ranged between 50 to 500 feet. Those municipalities with distance limits larger than 500 feet, or that limit such vendors to a designated festival area, are those of much greater populations than that of Ashland. The City very recently expanded time limits and locations of mobile food vendors as a result of the Downtown Resident Survey of 2019, and imposed new permit fees for parking on City property. The intention was to provide food options during City events and add vibrancy to downtown. These amendments were both approved unanimously by Council.

The attached map of the City of Ashland restaurants, taken from the Chamber of Commerce and slightly outdated as of May 2019, shows the proximity of the brick and mortar establishments within City limits. In the concentrated Downtown area, most food establishments are within one to two blocks of another, leaving little room for a mobile food vendor to find a location outside of two blocks, or just over 500 feet. More often than not, a mobile food vendor will request the use of a private business' lot, or a City's parking lot to make themselves visible and accessible to more populated and business areas.

Staff recommends that Council consider that the distance stated in Chapter 889 remain at 300 feet from a brick and mortar establishment of similar sales, and if not agreeable, not more than 500 feet, in order to lessen the likelihood of deterring all mobile concession food vendors from bringing their variety and their operations to the City of Ashland.

An alternative option to the argument is to increase the annual permit fee for mobile food concession vendors

from the current \$50 to between \$150 to \$500 for twelve months, or \$50 to \$150 for a three-month permit. Permits currently expire on June 30 of each year.

CHAPTER 889. TRANSIENT MERCHANTS, SOLICITATION IN RESIDENTIAL NEIGHBORHOODS, AND MOBILE CONCESSION STREET VENDORS.

889.01. Registration and License Required. It shall be unlawful for any Transient Merchant or Mobile Concession Street Vendor to engage in sales within the City of Ashland without being registered and licensed for that purpose as provided herein. It shall be unlawful for any Transient Merchant or any Permanent Merchant to solicit in residential neighborhoods without being registered and licensed for that purpose as provided herein.

889.02. Definitions.

(a) “Transient merchant” means any individual who engages in the retail sale of merchandise at any place in this state temporarily, and who does not intend to become and does not become a permanent merchant of such place. 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, but does not include a farm auction sale conducted by or for a resident farmer of personal property used on the farm, or the sale of produce or other perishable products at retail or wholesale by a resident of this state.

(b) “Permanent Merchant” means any person who, for at least six months prior to the consideration of the application of this chapter to said merchant: (1) has continuously operated an established place of business in the local trade area among the communities bordering the place of sale, or (2) has continuously resided in the local trade area among the communities bordering the place of sale and now does business from his/her residence.

(c) “Door-to-Door Solicitor” means any person, whether a permanent or transient merchant, who attempts to sell merchandise directly to residents by physically calling upon their dwelling place.

(d) “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.

(e) “Mobile Concession Street Vendor” shall include individuals and organizations that engage in the sale of concessions from motor vehicles, self-propelled vehicles, manually propelled vehicles, and trailers. Concessions are defined foods and beverages intended to be consumed at the point of purchase.

(f) “Charitable Organization” shall include any benevolent, philanthropic, patriotic, or eleemosynary person, partnership, association or corporation, or one purporting to be such.

(g) “Clerk” means the City Clerk.

889.03. Exemptions. The following shall be exempt from all 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 merchandise directly to other established businesses within the City of Ashland;

(c) Any person selling agricultural products which the person has grown or any fish which the person has caught;

(d) 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;

(e) Any person selling or offering for sale a service unconnected with the sale or offering for sale of merchandise;

(f) Any person holding a sale required by statute or by order of any court; any person conducting a bona fide auction sale pursuant to law; any person conducting a garage sale, yard sale, or estate sale at a private residence;

(g) Any employee, officer or agent of a charitable organization who engages in direct sales or solicitation of donations for or on behalf of said organization, provided that there is submitted to the clerk proof that such charitable organization is registered under sec. 202.12, Wis. Stats., and provided such organization shall comply with the provisions below

(1) Before any direct sales or solicitation for donations can take place, each such charitable organization must file a sworn application, in writing, on a form furnished by the City Clerk, which shall provide the following information:

(A) Name of organization.

(B) Names and addresses of officers of the organization.

(C) Description and approximate dates of the solicitation event(s).

(D) Names of individuals to be involved in solicitation.

(E) Proof of charitable status.

(2) Upon being satisfied that such organization, association or corporation is a bona fide group within the parameters of this chapter, the Clerk shall issue a permit without charge to such organization to solicit in the City. The clerk shall also issue to such organization, an official card for each individual to be involved in the solicitation, upon which shall be inscribed the name of each member. The card shall also contain the name of the organization and dates and purpose of the solicitation. This permit can be applied for on an annual basis and shall expire June 30 of each year.

(h) Any individual licensed by an examining board as defined in s. 15.01(7), Wisconsin Statutes.

(i) Any persons or organizations operating a concession authorized by a non-profit association in connection with a fair, festival or celebration which is being held under the direction of that non-profit association. Persons or organizations are prohibited from operating a concession or selling products or services within the defined fair, festival or celebration area without authorization from the non-profit association sponsoring the event. The entity sponsoring the event shall submit a description of the defined festival area to the Police Chief or his designee for approval.

(j) Any person 15 years old or under who is operating a stand to sell lemonade or similar beverages at the person's home or in the public right of way adjacent to the person's home, and any person 15 years old or under assisting that person, provided that the police department may order such stand closed if there is reason to believe the stand poses a threat to health or safety, in which case the person may apply for a license under this chapter.

889.04. Transient Merchant & Door-to-Door Solicitor Applications

(a) Applicant Information. Applicants for a transient merchant or door-to-door solicitor 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) Age, height, weight, color of hair and eyes;

(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) Nature of business to be conducted and a brief description of the merchandise, and any services offered;

(6) Proposed methods of delivery of merchandise, if applicable;

(7) Make, model and license number of any vehicle to be used by applicant in the conduct of his/her business;

(8) Most recent cities, villages, towns, not to exceed three, where applicant conducted his/her business;

- (9) Place where applicant can be contacted for at least seven days after leaving this city;
- (10) 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 years, and the nature of the offense and the place of conviction.

(b) Required Documents. Applicants for a transient merchant or door-to-door solicitor license shall present to the clerk for examination:

- (1) A driver's license or some other proof of identify as may be reasonably required;
- (2) A state 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 authorities;
- (3) A state health officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under state law; such certificate to state that applicant is apparently free from any contagious or infectious disease, dated not more than 90 days prior to the date the application license is made.

(c) Fee. At the time the transient merchant or door-to-door solicitor application is returned, a fee shall be charged in accordance with Chapter 165, the City of Ashland Comprehensive Fee Schedule, to cover the cost of processing said application. If said application is approved, the application fees will be charged as provided for in the City of Ashland Comprehensive Fee Schedule for each day that business is carried on in the City of Ashland. The Clerk shall issue an official card for each individual to be involved in the solicitation, upon which shall be inscribed the name of each solicitor. The card shall also contain the dates and purpose of the solicitation.

(d) Agent for service of process. The applicant shall sign a statement appointing the clerk his/her agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant, in the event the applicant cannot, after reasonable effort, be served personally.

889.05. Mobile Concession Street Vendors Applications. A Mobile Concession Street Vendor shall not operate within the City without first securing a license from the City. Applications shall be made to the City Clerk and acted upon by the Common Council. Licenses shall be for a term of one year and shall expire June 30. The fee for a Mobile Concession Street Vendor shall be charged in accordance with Chapter 165, the City of Ashland Comprehensive Fee Schedule. The fee shall be waived for non-profit organizations.

889.06. Investigation

(a) Referral to Police. Upon receipt of each application, the clerk may refer it immediately to the Chief of Police who may make and complete an investigation of the statements made in such registration.

(b) Denial of license. 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 a 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 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 provision of this chapter.

889.07. Appeal. Any person refused or denied a license may appeal the denial through the Common Council.

889.08. Prohibited Practices.

(a) A transient merchant or door-to-door solicitor shall be prohibited from: calling at any dwelling or other place between the hours of 8:00 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.

(b) A transient merchant or door-to-door solicitor 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.

(c) No transient merchant or door-to-door solicitor shall sell or offer for sale any goods, wares, merchandise or produce of any kind from a stand or vehicle while the same is placed or parked upon any public street except to make deliveries from house to house or to places of business. No signs or goods, wares, merchandise or produce of any sort shall be set, placed or displayed within any portion of the right-of-way for any City of Ashland street.

(d) No transient merchant or door-to-door solicitor shall sell or offer to sell any goods, wares, merchandise or produce of any kind in any City of Ashland park premises, including parking lots associated therewith without the prior written approval of the City of Ashland Park Board.

(e) No licensee nor any person in his behalf, shall use any sound amplifying device for the broadcasting of words upon any of the streets, alleys, parks or other public places of the City or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares, or merchandise which such licensee proposes to sell.

(f) No licensee shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.

889.09. Disclosure Requirements

(a) After the initial greeting and before any other statement is made to a prospective customer, a transient merchant or door-to-door solicitor 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.

(b) If any sale of merchandise is made by a transient merchant or door-to-door solicitor, or any offer for the later delivery of merchandise is taken by the seller, 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, in accordance with the procedure as set forth in sec. 423.203, Wis. Stats.; the seller shall give the buyer two copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of secs. 423.203(1)(a)(b) and (c), (2) and (3), Wis. Stats.

(c) If the transient merchant or door-to-door solicitor 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.

889.10. Mobile Concession Street Vendors.

(a) Mobile Concession Street Vendors shall be allowed to sell from public streets, but shall not impede the free use of streets or sidewalks by vehicles or pedestrians. All traffic and parking regulations shall be observed. If an on-duty officer of an authorized law-enforcement agency determines that a safety problem exists related to the selling activities at a specific location(s) by a Mobile Concession Street Vendor, the officer shall have the right to order the vendor to cease selling at that location(s). Mobile Concession Street Vendors shall not remain in one location, either on a city street, street right-of-way, or in a public park, for a period of longer than six (6) hours.

(b) Licensed Mobile Concession Street Vendors shall be allowed to operate only between the hours of 9:00 a.m. and 9 10:00 p.m. No sales shall be permitted within 300 feet of an established, operating concession stand operated by a non-profit or charitable organization, such as Little League, school groups, or other similar organizations, or other existing permanent food uses.

889.11. Food Vendors in Parks. The Public Works Director and/or Parks and Recreation Director may waive the six-hour limit and authorize food vendors to sell food items intended for on-site consumption in City parks for a period of five consecutive days or less during a specified event. Said food vendors will be required to complete an application and pay a fee equal to the amount charged to transient merchants.

889.12. Exhibition of License. Licensed transient or permanent merchants soliciting in residential neighborhoods must wear their identification license card in a conspicuous place on their clothing. Transient merchants selling from a fixed location must exhibit their certificate of license in a conspicuous place at the site where they are selling. Mobile Concession Street Vendors shall display their license in a window of their vehicle.

889.13. 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 registrant convicted.

889.14. Revocation of License. Licenses issued under the provisions of this ordinance may be revoked by the Common Council after notice and hearing for any of the following causes:

- (a) Fraud, misrepresentation, or incorrect statement contained in the application for license;
- (b) Fraud, misrepresentation, or incorrect statement made in the course of carrying on his/her business as a solicitor, or transient merchant;
- (c) Any violation of this ordinance;
- (d) Conducting the business of solicitor, mobile concession street vendor or transient merchant, as the case may be, in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public;
- (e) Conviction of any crime or misdemeanor.

889.15. Notice of Hearings. Notice of the hearing for revocation of a license shall be given by the City Clerk in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his/her last known address at least 72 hours prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a court summons.

889.16. Penalty. Any person, firm, or corporation that shall violate any of the provisions of this ordinance shall forfeit not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each offense, plus the cost of prosecution. Each day's violation of the provisions of this ordinance shall constitute a separate offense.

ADOPTED: 889 (1536) 3/12/2002

AMENDMENTS: 889 (1779) 3-13-2012; 889 (2016-1876) 7/12/2016; 889 (2020-1929) 3/10/2020;

City of Ashland Restaurants

- 1 2nd Street Bistro
- 2 Alley, The
- 3 Arby's
- 4 Ashland Family Restaurant
- 5 Big Ben's Famous Gyros & Pita Hut
- 6 Breakwater Restaurant
- 7 Burger Barn
- 8 Burger King
- 9 Chequamegon Grill / Hotel Chequamegon
- 10 Culver's of Ashland
- 11 Dairy Queen
- 2 Deep Water Grille
- 12 Domino's Pizza
- 13 El Dorado Mexican Restaurant
- 14 Frankie's Pizza
- 15 Hugo's Pizza
- 16 Kravin' Frozen Yogurt

- 17 Lake Rock Café
- 18 Lakeshore Café
- 19 Little Caesars Pizza
- 20 McDonald's
- 21 New China Restaurant & Lounge
- 22 Niblick Bar & Grill
- 23 Pizza Pub
- 24 Son Shine on Main Café
- 2 South Shore Brewery
- 25 Stagecoach Bar & Grill
- 26 Subway of Ashland
- 27 Well, The

COFFEE SHOPS & BAKERY

- 28 Ashland Baking Company
- 29 Black Cat Coffeehouse, The
- 30 Sandbar, The



CITY OF MONONA

Locations of operation. Mobile food establishments issued a license under this section shall only operate at the following locations:

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 Chapter 480, Zoning.

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.

CITY OF OCONOMOWOC

(j) Location Regulations – No food truck / mobile food shop shall be allowed to operate within thirty (30) feet of a property occupied by a residence; within ten (10) feet of a driveway or driveway apron; within ten (10) feet of a building entrance or fire exit; within ten (10) feet of another food truck or mobile food shop; closer than ten (10) feet from any public sidewalk; or 300 feet from the premise of a private or public school. All food trucks or mobile food shop shall remain at the fixed location per the approved permit.

CITY OF SHEBOYGAN

No mobile food establishment shall operate on any public street within 100 feet of any restaurants in the city, unless the mobile food establishment obtains written permission from all adjacent restaurants in operation, and retains such permission within the mobile food establishment; and

CITY OF LA CROSSE

A vendor shall not sell within 100 feet of a licensed restaurant, during its kitchen hours, without written permission from said restaurant, unless said vendor is operating within 50 feet of its mobile service base licensed by the La Crosse.

CITY OF EAU CLAIRE

more than 200 feet from a restaurant, unless written permission is obtained from every business with a restaurant license within 200 feet

20 feet or more from any intersection

at least 10 feet from the extension of a door to the curb

at least 500 feet or not in the same park whichever is greater, from a Special Event for 1 hour before the event, during the event and 1 hour after the event

CITY OF BAYFIELD

Direct sellers shall not be allowed to be located within 500 feet of a permanent business dealing in the same or similar goods or services.

CONVERSION CHART (APPROX) **HIGHLIGHTED IS CURRENT ORDINANCE**

FEET	CITY BLOCKS	MILES
200	0.75	
300	1.13	0.05
400	1.50	
500	1.89	0.10
750	2.85	0.15
1000	3.75	0.20
1500	5.68	0.30
3000 (1000 YARDS)	11.36	0.50

SUBJECT: Continued Discussion and Possible Action Regarding Creating a System for Collection and Analysis of Data Related to the Ashland Police Department (*Administration*)

RECOMMENDATION: Discussion and Possible Action

DEPARTMENT OF ORIGIN: Councilor Ullman

CLEARANCES: Council President

EXHIBITS:

SUMMARY STATEMENT:

Discussion began on January 26, 2021 at the Committee of the Whole meeting. As the three-hour time limit was nearing, Council President Haas recommended continuing discussion regarding collecting and analyzing data in regard to the Ashland Police Department. Councilor Ullman proposed to establish funding to begin this process. Councilor MacKenzie moved, seconded by Councilor Ortman, to direct Administration to find \$10,000 to begin this system. This motion carried 8-3 by voice vote.

The purpose of this discussion is to flesh out the goal of the study, and to discuss the capabilities of the current system.

Potential Goals:

- Work together with Ashland County
- What is the City's purpose for collecting data
- What do we want to do with data collected

SUBJECT: Discussion and Possible Action Regarding Creating an Ad-Hoc Commission to Research Redistricting in Response to the 2020 Census (*Mayor*)

RECOMMENDATION: Approve to Create Ad-Hoc Committee

DEPARTMENT OF ORIGIN: Mayor

CLEARANCES: Council President

EXHIBITS:

SUMMARY STATEMENT:

On May 29th, 2018 the Council voted 8-2 to reduce the size of the council from eleven to seven after the 2020 census.

It was subsequently determined that State Statute requires a particular population of residents in a ward based on the size of the city: [“5.15 \(2\)\(b\)4 In any city, village or town in which the population is less than 10,000, each ward shall contain not less than 300 nor more than 1,000 inhabitants.”](#) This means that if our population is between 7,000 and 9,000 we will be required to have a minimum of nine council members; if our population is between 9,000 and 10,000 we are required to have a minimum of eleven council members. (But if our population is over 10,000 we can have as few as five council members.) This assumes that we want to maintain an odd number of members, to reduce the incidence of tie votes.

Background on the decision:

Reasons mentioned for reducing the size of the council included:

Cost savings for training and overhead
Council seats often uncontested
More efficient decision making and government
Shorter meetings
Align with the best practices of other municipalities
Allow for a possible pay raise to incentivize service and compensate work
Could also convert some seats to “at large” providing for more electoral competition *Note, this is not allowed by state law. All members must represent wards.

Tentative Timeline:

-April 2021: Census results available, confirm that reducing to nine members is in compliance with State Statutes based on city population. Create new districts in cooperation with County.
-Summer 2021: Council must adopt a redistricting ordinance in compliance with State Statute [62.08 \(1\)](#)
-October 2021: The Clerk must file a report with the County Clerks confirming the boundaries of the wards.
-April 2022: First election with new ward boundaries; begin transition to smaller council.

The City Clerk has recently learned from the County Clerk that Ashland County is not interested in pursuing a

reduction in County Board size at this time.

Remaining Questions:

Is the Council still in support of reducing the size of the Ashland City Council from eleven members to nine?
Who will lead the redistricting process to ensure that the result is transparent and unbiased?