



MEMORANDUM

Date: May 31, 2012

To: Common Council
From: Pamela A. Captain, City Attorney

RE: O-8-12 Parking Regulations (Mobile Restaurants)

Ordinance 0-8-12 proposes to prohibit the parking of mobile restaurants within 75 feet of certain businesses. The business types referenced in the proposed ordinance can be found at a library, the United States Census Bureau website or a manual can purchased through the NTIS.gov website. The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

From a legal perspective this proposed ordinance is not written for ease of understanding by the general public or for enforcement purposes. A mobile restaurant business owner will be required to search among the business types set forth in the ordinance to determine whether the city street upon which he or she desires to park is within 75 feet of any of the business types referenced therein. If a member of the general public is questioning whether a mobile restaurant is properly located, that member will have to go through the same search and analysis as a mobile restaurant business owner to determine if the mobile restaurant is properly parked. Finally, upon receipt of a complaint our police officers responding to the complaint will have to search among the business types set forth in the ordinance and determine whether the alleged offender is parked within 75 feet of any of the business types referenced therein. This is not the usual parking regulation that our police officers enforce. There will likely be instances where an interpretation is necessary to determine whether a business establishment falls within one of the Sectors referenced in the ordinance and where parking is prohibited.

An alternative method of regulating the parking of mobile restaurants is to decide where the common council either wants or does not want mobile restaurants to park and then enact an ordinance to identify those specific locations by street name(s). People are familiar with this type of parking ordinance. There is no room for interpretation as to what is or is not a specific business type. In other

words, an ordinance could be drafted to indicate that it is okay to park a mobile restaurant on certain named streets during certain hours or on only one or both sides of the street or only during certain times of the year, etc. Or an ordinance could be drafted to specifically identify what streets or parts of streets one cannot park a mobile restaurant. By fashioning the ordinance in this way all of the persons who want to know where mobile restaurants can or cannot park can look in one place and know by street name, the time of day, the side of the street or otherwise where it is legal or illegal to park.

Another alternative is to regulate the parking of mobile restaurants by permit. The number of permits issued can be determined by the common council as well as specific parking locations, times of day, days of the week, etc. By using this method, the common council will have the most control over where mobile restaurants park. Enforcement will be specific to the streets, times of day, etc. set forth on the permit. Each permit that is issued can be specifically tailored to address the parking, pedestrian safety, traffic and congestion issues associated with the mobile restaurant. This will avoid misunderstandings and interpretations as to whether a particular business is a NAICS Sector 44 or 45 or 72 business.

As a reminder, generally, ordinances are enacted under authority of cities' police powers.

The police power of the state, exercised by municipalities under authority of the legislature, extends to the public safety, health, morals and general welfare.

Cities have authority to enact ordinances but that authority is not without limits, both under Wisconsin and federal laws. An ordinance must also be reasonable and not be arbitrary, in order to accomplish the articulated governmental purpose for which it is enacted. Also, in order to ensure that an ordinance will be upheld as a valid exercise of a cities' police power, it is vital that the purposes for which the ordinance is enacted is clearly articulated and supported by evidence in the record (minutes).



TO: Common Council

FROM: Kara Homan, AICP, Principal Planner, Community Development Department

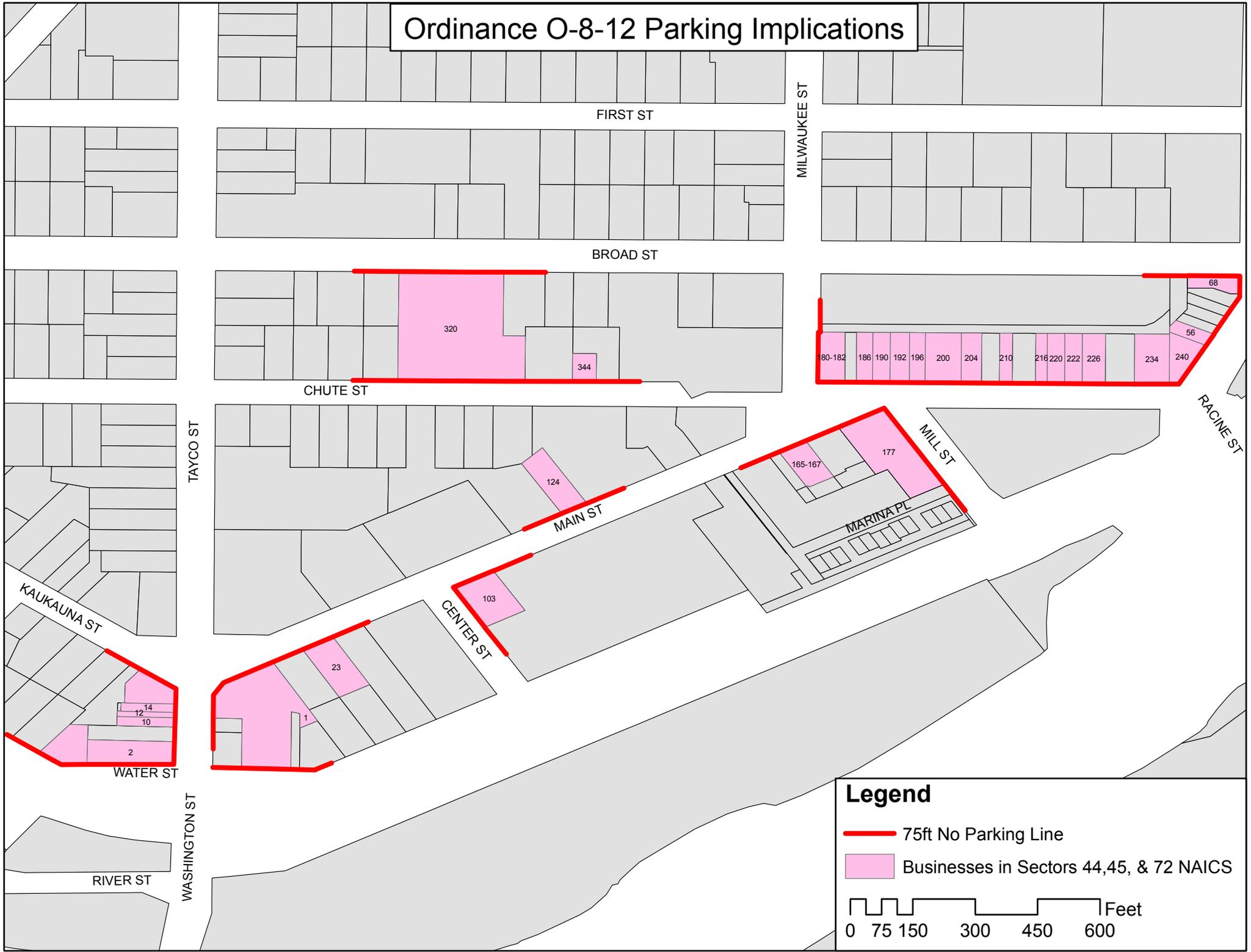
DATE: May 31, 2012

RE: **Illustration of O-8-12 Parking Restrictions in Downtown District**

Attached, please find a map illustrating where Mobile Restaurants would be restricted from parking in the Downtown District as a result of proposed Ordinance O-8-12. This map does not illustrate other restrictions that may result from other provisions of the Municipal Code as they pertain to on street parking or public parking lots.

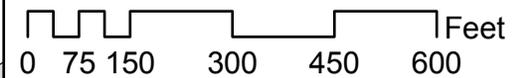
This illustration was created utilizing North American Industry Classification System (NAICS) Codes for businesses within the district, as made available by the InfoUSA business database. Only sectors 44-45: Retail Trade, and 72: Accommodation and Food Services were utilized, as specified in the proposed ordinance. Community Development staff verified, and where necessary, corrected this data through field verification.

Ordinance O-8-12 Parking Implications



Legend

- 75ft No Parking Line
- Businesses in Sectors 44, 45, & 72 NAICS



ORDINANCE O-8-12
AN ORDINANCE AMENDING SECTION 10, ARTICLE OF MUNICIPAL CODE –
PARKING REGULATIONS

INTRODUCED BY ALDERMAN KLEIN

The Common Council of the City of Menasha does hereby ordain as follows:

SECTION 1: Amend Title 10, Article C of the Code of Ordinances of the City of Menasha, Wisconsin by creating SEC. 10-1-22 (e) as follows:

Title 10 – Motor Vehicles and Traffic

ARTICLE C

Parking Regulations

SEC. 10-1-22 STOPPING OR PARKING PROHIBITED IN CERTAIN SPECIFIED PLACES.

(e) **MOBILE RESTAURANT PARKING RESTRICTION.** No person shall park or leave standing upon any street or highway within the City limits any mobile restaurant whether temporarily or otherwise, within 75 feet, along a street line, of a business, Sectors 44, 45 and 72, North American Industry Classification System.

SECTION 2: This amending Ordinance shall take effect upon passage and publication as provided by law.

Passed and approved this day of , 2012.

Donald Merkes, Mayor

ATTEST:

Deborah A. Galeazzi, City Clerk