

ORDINANCE NO. 20-88
BY: Robert Zimmerman

Amending Sections 545.01-545.08, and adding new Sections 545.09 and 545.10, and new Chapter 546, of the Business Regulation Code, and amending Section 1111.05 of the Traffic Code, of the Codified Ordinances of the City of Shaker Heights, regarding the regulation of the solicitation of and the sale of goods and services in the City's right-of-way and door-to-door, including sales from food, ice cream and game trucks.

WHEREAS, Sections 545.01, 545.03, 545.04, 545.05, 545.07 and 545.08 of the Business Regulation Code were enacted in Ordinance 78-19, on February 27, 1978; Section 545.02 of the Business Regulation Code was most recently enacted in Ordinance 92-120, on July 27, 1992; and Section 545.06 of the Business Regulation Code was most recently amended in Ordinance 05-130, on December 19, 2005; and

WHEREAS, Section 1111.05 of the Traffic Code was enacted in Ordinance 59-122, on June 22, 1959, and was amended by Ordinance 71-115, on October 25, 1971; and

WHEREAS, the City has reviewed its regulation of vehicles that sell items in the right-of-way, such as food and ice cream trucks, or provide services for private parties while parked in the street, such as game trucks, and has also reviewed its ordinances regulating the solicitation of sales of goods and services in the right-of-way and going door-to-door; and

WHEREAS, the City's Law Director has recommended that Council amend the Traffic and Business Regulation Codes in order to clarify contradictions, better reflect the manner in which the current regulations are actually implemented, make changes and add language to improve regulation of the City's right-of-way and door to door solicitation, and add specific regulations of food trucks, game trucks and ice cream trucks; and

WHEREAS, this Council has determined that it is necessary, in order to protect the public health, safety and welfare, and to clarify the City's regulation of sales from vehicles, and the solicitation and sales of goods and services in the right-of-way and door to door, including allowing, in certain circumstances, sales from mobile food, ice cream and game vehicles, to enact the following amendments to the City's Codified Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Shaker Heights, State of Ohio:

Section 1. That Sections 545.01 through 545.08 of the Business Regulation Code, and Section 1111.05 of the Traffic Code, of the Codified Ordinances of the City of Shaker Heights presently in effect that are being amended by this Ordinance, as indicated in Section 2 of this Ordinance, are hereby repealed.

Section 2. That the following sections of the Business Regulation Code and Traffic Code of the Codified Ordinances of the City of Shaker Heights are hereby added or amended:

**PART FIVE - BUSINESS REGULATION CODE
CHAPTER 545**

Solicitation of Sales of Goods and Services~~Solicitors and Peddlers~~

545.01 LICENSE REQUIRED.

No person shall sell or offer for sale, barter, gift, or exchange ~~, or go from door to door soliciting the purchase of or gift of~~ any goods or other articles of value or money or offering any services for hire or commission ("goods or services") in the right-of way of the City, including sidewalks, driveway aprons, tree lawns and roadways, in any public places, or going from door to door on public or private property in any place in, upon or along the streets or other public places within the City, unless such person is the holder of a license issued by the City which is in full force and effect and issued pursuant to the provisions of this Chapter or Chapter 546, as applicable. Such person shall have such license with ~~them~~him at all times while exercising such calling and shall, upon demand, exhibit the license to any police officer or official of this City or occupant of any residence or business establishment within the City being contacted or solicited.

545.02 LICENSE APPLICATION, ISSUANCE AND FEE.

(a) Any person desiring to sell or offer for sale, barter, gift, or exchange ~~, or to solicit any goods or services in the right-of way, in any public places, or going from door to door on public or private property from door to door, the purchase of or gift of any goods or other articles of value or money, or offering any services for hire or commission within the City,~~ shall make application to the Police Department Chief of Police or his authorized representative. Such person shall furnish the following evidence of ~~their~~his identity and character:

- (1) Name, present residence address, permanent or business address, and telephone number;
- (2) A brief description of the nature of the business and the kinds of goods or services to be peddled or solicited;
- (3) The name, address and telephone number of the applicant's employer and credentials showing authorization by or representation of such employer; if the applicant is self-employed, the applicant~~he~~ shall so state;
- (4) Two (2) photographs of the applicant of appropriate size (approximately two inches by two inches (2" x 2")), one (1) of which shall be attached at all times to the license, and the other for the records of the Police Department;
- (5) Submission to fingerprinting, if requested, by the Police Department for local police files and for the purpose of determining the criminal record, if any, of the applicant.

(b) A license shall be issued unless it is determined by the Police Department Chief of Police or his authorized representative, that the applicant has willfully misrepresented ~~their~~his identity or intention, or has violated any provision of this Chapter, or has been convicted of any felony or any misdemeanor involving force, violence, moral turpitude, or in any way connected with the act of peddling or soliciting other than a traffic offense. The fee for the license shall be forty dollars (\$40.00) per year.

545.03 LICENSE EXPIRATION AND REVOCATION.

Any license issued pursuant to the provisions of this Chapter shall expire at the end of one (1) year following the date of issuance, and may be revoked or suspended at any time by the Chief of Police, or the Chief's~~his~~ authorized representative, should the person to whom it is issued be found to have willfully misrepresented ~~their~~his identity or intention, or has been convicted of any felony or misdemeanor involving force, violence, moral turpitude, or in any way connected with the act of peddling or soliciting

other than a traffic offense, or has violated any section of this Chapter.

545.04 EXEMPTION FROM LICENSE AND FEE; REGISTRATION.

(a) The following persons shall not be required to obtain a license or pay a license fee as provided in this Chapter, but shall register with the Police Department as provided in Section 545.05.

- (1) Any person soliciting or peddling newspapers or anything which such person has personally manufactured, raised or produced.
- (2) Any person soliciting the rendering of personal services to be performed by the person so soliciting.
- (3) Any person soliciting contributions for, or offering for sale, any goods or publications for any religious, charitable, civic, educational or political organization.

(b) Persons under the age of 18 who sell goods during daylight hours on the sidewalk or tree lawn for charitable or non-commercial (personal) purposes (such as a lemonade stand) shall not be required to obtain a license or register with the Police Department. No such sales shall block the sidewalk or impede pedestrians, or create any nuisance.

(c) The requirements to obtain a license or to register under this Chapter do not apply to a Mobile Food or Game Vehicle subject to Chapter 546, the delivery or provision of goods or services, a person handing out fliers door to door, or any person going door to door seeking to speak to occupants about any religious, political, or other matter that does not involve the solicitation of sales or donations.

545.05 REGISTRATION; NOTICE OF SALES OF GOODS OR SERVICES—SOLICITING OR PEDDLING.

~~—~~(a) Every person subject to the requirement to register pursuant to Section 545.04 (a), provisions of this chapter, prior to selling or offering for sale, barter, gift, or exchange, any goods or services soliciting or peddling from door to door within the City, shall register with the Police Department for identification purposes their~~his~~ name, address and telephone number. ~~—~~However, if the solicitation is on behalf of an organization only, the responsible officer thereof shall be required to register the name, address and telephone number of the organization.

(b) Such person or the responsible officer on behalf of an organization shall notify the Police Department personally, of the time period and the specific areas within the City in which soliciting or salespeddling will be conducted. ~~—~~No person or organization shall solicit or sellpeddle from door to door at any time without having given such specific prior notice, and no person shall peddle or solicit in an area or at a time not previously listed with the Police Department.

545.06 HOURS.

No person subject to the license requirements of this Chapter shall peddle or sell or solicit from door to door within the City before the hour of 9:00 a.m. or after one-half (1/2) hour after sunset of any day. No person who is subject to the provisions of this Chapter, but who is exempt from the license requirements as set forth in Section 545.04 (a), shall sellpeddle or solicit from door to door within the City before the hour of 9:00 a.m. or after 9:00 p.m. of any day.

545.07 MISREPRESENTATION.

No seller peddler or solicitor shall register a false or fictitious name or address, or represent by words or action that they are~~he is~~ the employee, agent, partner or representative of any person or organization when in fact they are~~he is~~ not the employee, agent, partner or representative of such person or organization.

545.08 NOTICE PROHIBITING ENTRY.

No person, while engaged in selling or soliciting ~~or peddling~~ regulated by this ~~C~~chapter, shall knock at the door or ring the doorbell of any home, apartment or other dwelling unit in the City upon which is clearly displayed at the entrance a notice which reads "No Solicitors"~~, or a similar notice~~ which otherwise clearly purports to prohibit seller~~peddlers or~~, solicitors ~~or vendors~~ on the premises, unless such person is or has been invited upon the premises by the occupant ~~thereof~~.

545.09 STREET AND SIDEWALK BUSINESS STANDS.

No person shall sell or solicit the sale of goods or services, and/or erect, place or maintain in, upon or over any public street, alley, driveway apron, sidewalk, tree lawn, or other public property any stand, cart, table, box, bin or any other arrangement or structure for the display or sale of goods or the provision of services at that location, or for the pursuit of any occupation whatsoever, unless a license or permit to do so has been issued by the City for a special event. This section shall not apply to a person under the age of 18 who sells goods during daylight hours on the sidewalk or tree lawn for charitable or non-commercial (personal) purposes, such as a lemonade stand.

545.10 UNSOLICITED PRINTED MATERIAL RESTRICTIONS.

(a) No person shall throw or place partially or wholly in the public right-of-way any newspaper, handbill, advertising circular, or other printed material, except as permitted in part (b) of this Section. The public right-of-way includes, among other places, roadways, driveway aprons, tree lawns, and public sidewalks.

(b) The following actions are exempt from the prohibition of part (a) of this Section:

- (1) placing printed material in an enclosed news box, approved book drop box, public trash or recycling bin, or similar permanent container;
- (2) handing printed material to a person who freely accepts it;
- (3) keeping printed material in an orderly, safe, and non-obstructive condition, in the immediate vicinity, and under the close and continuous control, of its lawful possessor, provided that the printed material is kept in the public right of way for no more than twelve (12) hours; and
- (4) temporary placement expressly authorized by the City.

(c) No person shall throw or place on private property any newspaper, handbill, advertising circular, or other printed material, except as permitted in part (d) of this Section. No person shall deliver any newspaper, handbill, advertising circular, or other printed material, in any manner, to property that the deliverer has reason to believe is vacant.

(d) The following actions are exempt from the prohibition of (c) of this Section:

- (1) Handing printed material to a person who freely accepts it.
- (2) Placing printed material pursuant to, and in a manner contemplated by, the solicitation by or permission from an occupant or owner of the property for placement of that particular material;
- (3) Leaving printed material too dense to be moved or blown about by the wind or other weather that is enclosed in a container, such as a box or bag, outside of a home or building, if

left within five (5) feet of an exterior door, not including a garage door;

- (4) Leaving printed material outside a home or building but inside a weather-proof box or container that the person placing the material reasonably believes to have been provided by the property for the purpose of accepting deliveries of newspapers and other printed material. This provision does not authorize the use of official United States Post Office containers for pacing material other than by a Postal Service worker;
- (5) Leaving printed material attached securely to a home or building's exterior door, or immediately inside an exterior door; or
- (6) Delivery by the United States Postal Service.

CHAPTER 546

Mobile Food and Game Vehicles

546.01 DEFINITIONS

As used in this Chapter:

(a) "Mobile food vehicle" shall mean a food establishment that is located upon or within a vehicle, including but not limited to trucks, passenger vehicles, motorcycles and bicycles, or a cart or other equipment which is pulled by a vehicle, where food or beverage is cooked, prepared, or served for individual portion service. This definition includes but is not limited to: mobile food kitchens, pushcart vendors, bicycle cart vendors, mobile food trucks, canteen trucks, ice cream trucks and coffee trucks. This definition does not apply to "meals on wheels" program vehicles or food delivery services.

(b) "Mobile game vehicle" shall mean a vehicle used to provide games, including video games, for persons entering the vehicle, including trucks, passenger vehicles, vans, and trailers, whether the vehicle is self-propelling or must be pulled by another vehicle.

(c) "Mobile ice cream vendor" or "ice cream truck" means any motorized or non-motorized vehicle in which ice cream, popsicles, ice sherbets or frozen desserts of any kind are carried for purposes of retail sale on the streets of the City. A mobile ice cream vendor is a type of mobile food vehicle under this Chapter.

(d) "Special event" for the purpose of this Section shall mean an activity, other than a Parade under Section 1111.05 of the Traffic Code, taking place in the dedicated public right-of-way or on any public property, including, but not limited to, parks and other City-owned facilities, or a public event on private property when City-services are required, for which a Special Event Permit or a special License has been issued by the City. Special events include, but are not limited to, an organized running race or walk, block party, festival, market, street fair, art exhibit or concert or other performance, or a private party.

546.02 RESTRICTIONS ON OPERATIONS.

(a) No mobile food vehicle shall sell or provide food or beverages on City-owned property or within the public right-of-way unless authorized as part of a Special Event Permit or a special License issued by the City, except that ice cream trucks may operate within the public right-of-way without being part of a Special Event or having a Special Event Permit or

special License from the City. An ice cream sales vehicle must obtain a license pursuant to this Chapter, and must follow the requirements of this Chapter and Section 1111.05 of the Traffic Code.

(b) A mobile game vehicle may operate within the public right-of-way without being part of a Special Event or having a Special Event Permit or special License from the City, but only for or as part of a private event, while such event is taking place, and only while parked on the street frontage immediately adjacent to the property where the private event is being held. A mobile game vehicle may not be open to the public while parked on a public street, or otherwise in the public right-of-way, unless as part of a Special Event. A mobile game vehicle may only operate while parked on a public street if it is parked in full compliance with all parking laws of the City. No mobile game vehicle may operate on City-owned property unless authorized by a Special Event Permit or special License issued by the City.

546.03 REGULATION OF MOBILE FOOD VEHICLES.

(a) A mobile food vehicle may be inspected by the City's Fire Department at any time during its operation in the City in order to determine whether the vehicle is being operated in compliance with the ordinances of the City.

(b) No mobile food vehicle shall operate on public or private property within 500 feet of a Special Event, unless approved as part of that Special Event, or within 500 feet of any fixed, permanent restaurant location.

(c) All mobile food vehicles shall offer a waste container for public use that the operator shall empty at the operator's expense and not into any City-owned waste container.

(d) No mobile food vehicle shall make or cause to be made any excessive noise, lighting, or other method of attracting the attention of the public, except for ice cream trucks that are in compliance with the requirements of this Chapter, Section 1111.05 of the Traffic Code, and the City's noise regulations.

(e) Mobile food vehicles shall not be permitted free-standing temporary signage except one menu board, with a maximum size of six square feet, placed adjacent to the mobile food vehicle.

(f) The City reserves the right to relocate a mobile food vehicle to an alternate location as determined by the City if the approved location needs to be used for emergency purposes or other public benefit.

(g) The operation of mobile food vehicles shall at all times be in compliance with all applicable governmental rules and regulations, including but not limited to those of the County Public Health Department and the State.

546.04 REGULATION OF MOBILE ICE CREAM VENDORS.

(a) Any person desiring to operate a mobile ice cream truck shall make application to the Police Department for and obtain an annual Mobile Ice Cream Vendor License prior to operating in the City. Such person shall submit a completed application on the form provided by the Police Department, which shall include all of the following:

(1) Name, present residence address, permanent or business address, and telephone number of the operator of the ice cream truck;

(2) The name, address and telephone number of the business entity that owns or furnishes the ice cream truck or franchise to operate such truck under the business's name; if the applicant is self-employed, the applicant shall so state;

- (3) The make, model, year and current registration number of the vehicle(s) used by the operator;
- (4) A copy of the operator's driver's license;
- (5) Two (2) photographs of the applicant operator of appropriate size (approximately two inches by two inches (2" x 2")), one (1) of which shall be attached at all times to the license, and the other for the records of the Police Department;
- (6) A copy of the operator's Mobile Food License issued by the Cuyahoga County Board of Health or another authorized Health Department;
- (7) Proof of insurance as required in this Section;
- (8) Submission to fingerprinting, if requested, by the Police Department for local police files and for the purpose of determining the criminal record, if any, of the applicant, or other background check acceptable to the Police Department; and
- (9) Such other information as may be reasonably required by the Police Department.

(b) The applicant shall submit a fee for the License of forty dollars (\$40.00) per year.

(c) A License shall be promptly issued after submission of a complete application, the fee, and the required background check, unless it is determined by the Police Department that the applicant has willfully misrepresented their identity or intention, or has violated any provision of this Chapter or of Section 1111.05 of the Traffic Code, or has been convicted of any felony or any misdemeanor involving force, violence, moral turpitude, any sex crime law, or driving while under the influence of drugs or alcohol or operating a vehicle while intoxicated.

(d) The Mobile Ice Cream Vendor License shall be valid for the calendar year in which it was issued. The License may be revoked or suspended at any time by the Chief of Police, or the Chief's authorized representative, should the person to whom it is issued be found to have willfully misrepresented their identity or intention, or has been convicted of any felony or misdemeanor involving force, violence, moral turpitude, any sex crime law, or driving while under the influence of drugs or alcohol or operating a vehicle while intoxicated, or has violated any section of this Chapter.

(e) The operator of a Mobile Ice Cream Truck shall maintain a valid Mobile Food License issued by the Cuyahoga County Board of Health or another authorized Health Department while operating within the City. The license shall at all times be clearly displayed on the vehicle during times of operation.

(f) The operator of a Mobile Ice Cream Truck shall maintain general liability insurance and automobile insurance covering the vehicle, business operation and any property or bodily injury that may result from their operation within the City in amount as may reasonably be required by the Director of Law. The operator shall provide a certificate of insurance at the time of application for a License. Licensed operators shall maintain and carry proof of insurance at all times while operating within the City. Failure to carry or maintain the required level insurance shall result in a denial of the application for or a revocation of the License.

(g) The operator shall clearly display their City Mobile Ice Cream Vendor License on the exterior of the vehicle or through their vending window so as to be conspicuously visible to all customers. Vendors shall also carry all personal credentials on their person at all times, including a valid Ohio driver's license and proof of insurance, when operating within the City.

(h) A Mobile Ice Cream Truck operating in the City shall maintain the following equipment in good working order:

- (1) A sign saying "Slow" or similar as approved by the Police

Department that is attached to the left side of the truck which shall be extended out from the side of the truck while it is parked for sales;

(2) A convex mirror mounted on the front so that driver in the driver's normal seating position can see the area in front of the truck obscured by the hood; and

(3) A device capable of emitting a sound audible under normal conditions from a distance of not less than 200 feet when the vehicle is backing up.

(i) A Mobile Ice Cream Vendor License may be denied, suspended or revoked if it is found that the operator has willfully misrepresented their identity or intention, or has violated any provision of this Chapter or of Section 1111.05 of the Traffic Code, or has been convicted of any felony or any misdemeanor involving force, violence, moral turpitude, any sex crime law, or driving while under the influence of drugs or alcohol or operating a vehicle while intoxicated.

(1) Licensee shall be notified promptly, in writing of any decision to deny, revoke or suspend their License and of the licensee's right to appeal the decision.

(2) Licensee may appeal a denial, revocation or suspension of a License by submitting a request to appeal, in writing, to the Chief of Police within thirty (30) days of the date of the notice of revocation or suspension. The Chief of Police shall hold a hearing within thirty (30) days of the date the City received the licensee's appeal. The licensee shall have the right to appear at such hearing, to be represented by counsel, and have the right to examine and cross examine witnesses. In the event of a decision and ruling adverse to the licensee, the licensee shall have the right to appeal such decision and ruling to the City's Board of Appeals by sending a written appeal to the Director of Law.

(3) Whenever, for any cause, a license is denied or revoked, the operator shall not be eligible for a license for a period of twelve months from the date of denial or revocation of the License.

(j) Persons operating a mobile ice cream truck without a valid license may be served with a cease and desist order by the Police Department or may be prosecuted as set forth in Chapter 599.

PART ELEVEN - TRAFFIC CODE

TITLE THREE - Streets and Traffic Control Devices

Chap. 1111. Street Obstructions and Special Uses.

1111.05 SALES OF GOODS OR SERVICES PEDDLING FROM VEHICLES AND CARTS.

(a) No person shall sell goods or services on a public street or roadway, sidewalk, driveway apron, or tree lawn from a vehicle or cart without having obtained a license issued under Chapter 545 or 546 of the Business Regulation Code, or pursuant to a Special Event Permit or License Agreement with the City. The sale of goods includes, without limitation, the sale of food, ice cream and beverages.

(b) No person shall shout, blow a horn, ring a bell, or use any other sound producing device upon any of the streets, parks, or other public places of the City or upon any private premises within the City for the purpose of attracting attention to any goods, wares, or merchandise which such person is attempting, proposing, or intending to sell, except that a soft bell or chime securely fastened to a vehicle may be run while such vehicle is parked,

~~stopped or standing.~~

~~(b) No person shall sell goods or services vend or peddle goods, wares, or merchandise on a public street or roadway street, sidewalk, driveway apron, or tree lawn from a vehicle or cart unless such person is in compliance with the following regulations, except to the extent any regulation is modified by a Special Event Permit or License Agreement with the City:~~

- ~~(1) Unless a street is closed from curb to curb to traffic pursuant to a Special Event Permit or License, no sales of goods or services may be made:
 - ~~A. within 1000 feet of premises used for school or recreation purposes; within 250 feet of any street intersection; on a through street; on any street with a speed limit of greater than 25 miles per hour (MPH);~~
 - ~~B. from the left side of a vehicle parked, stopped or standing on a public street or roadway;~~
 - ~~C. while standing, stopping or parking such vehicle or cart in any one place for more than fifteen (15) minutes;~~
 - ~~D. in a congested area, or in such manner as to obstruct or impede the normal flow of traffic or inconvenience to the public; or~~
 - ~~E. without the vehicle using its emergency flashing lights on both the front and rear of such vehicle.~~~~

- ~~(2) No sales of goods or services may be made, on or before the hour of 11:00 a.m., or after either 9:00 p.m. or sunset, whichever is earlier 5:00 p.m., or on Sundays or legal holidays.~~

~~(c) No person selling goods, wares, or merchandise from a vehicle shall stand, stop or park such vehicle in any one place on a public street for the purpose of selling or soliciting purchases of such goods, wares or merchandise for more than five minutes~~

- ~~(3) No person shall ; or operate such vehicle or cart at such a slow rate of speed as to obstruct or impede the normal flow of traffic. ; or operate, stop, stand, or park such vehicle for the purpose of selling or soliciting purchases of such goods, wares, or merchandise, in any congested area, or in such manner as to obstruct or impede the normal flow of traffic or inconvenience to the public~~

~~When such vehicle is standing, stopped or parked for the purpose of soliciting or selling goods, wares, or merchandise, emergency flashing lights on both the front and rear of such vehicle shall be used.~~

- ~~(4) No person shall shout or blow a horn while operating or using a vehicle for the purposes of selling goods or services for the purpose of attracting attention to such goods or services.~~

- ~~(5) An ice cream truck may operate a bell, chime or music while moving on a street, except that the volume shall be set so that no such sound may be heard more than 500 feet from the vehicle at any time.~~

- ~~(6) No sales of goods or services may be made on any street more than twice on any day.~~

~~(cd) No person shall vend or peddle goods, wares, or merchandise, on a public street except on the sidewalk, paved portions of tree lawns, or driveway aprons.~~

~~(e) No person having for sale or selling goods, wares or merchandise from a vehicle shall operate such vehicle or cause or permit such vehicle to be operated on any street in this City more than once each day for the purpose of selling or soliciting purchases of such goods, wares, or merchandise.~~

(~~d~~) Every vehicle used for the purpose of soliciting or selling goods, wares, or merchandise from which wrappings or waste material of any type may litter the public streets, shall be equipped with one or more disposal receptacles of sufficient capacity to handle the amount of litter or waste emanating from such vehicle. -Every vendor or operator of such vehicle shall clean each area where sales have been made of all litter emanating from ~~the~~ vehicle or customers before moving to another location.

Section 3. This ordinance is not intended to be, nor does it, constitute the regulation of the occupancy or use of the public way as defined in Ohio Revised Code Section 4939.

Section 4. This ordinance shall take effect from and after the earliest time allowed by law.

Enacted October 26, 2020

Approved this ____ day of _____, 2020.

DAVID E. WEISS, MAYOR

Attest:

JERI E. CHAIKIN
Clerk of Council

coun20/01026FoodTruck-SolicitingCODORD