

ORDINANCE NO. 2024 - 83

AN ORDINANCE AMENDING AND ENACTING CHAPTER 743 OF THE CODIFIED ORDINANCES OF THE CITY OF PARMA HEIGHTS, ENTITLED, "FROZEN DESSERT PEDDLERS" TO PROVIDE FOR A REVISED CHAPTER OF THE BUSINESS REGULATION CODE

WHEREAS, the Council Safety Committee is recommending that Chapter 743 of the Parma Heights Codified Ordinances be revised, enacting a Chapter regulating frozen dessert peddlers; and

WHEREAS, it is the desire of this Council to adopt the recommendation of its Safety Committee.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Parma Heights, County of Cuyahoga, and State of Ohio:

Section 1: That this Council does hereby revise and enact Chapter 743 of the Parma Heights Codified Ordinances, entitled, "Frozen Dessert Peddlers" of the Business Regulation Code, which reads in its entirety as set forth in Exhibit "A", and which is attached to this Ordinance and incorporated by reference as if fully rewritten herein.

Section 2: This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 3: That this Ordinance shall take effect and be in force from and after the earliest date provided for by law.

PASSED: December 9, 2024

Thomas Rounds
PRESIDENT OF COUNCIL

ATTEST: Barbara Allen
CLERK OF COUNCIL

December 9, 2024
APPROVED

FILED WITH
THE MAYOR: December 9, '24

MMG
MAYOR MARIE GALLO

EXHIBIT A

CHAPTER 743

Frozen Dessert Peddlers Ice Cream Vendors

743.01 Definitions.

743.02 Enforcement.

743.03 Requirements and regulations of peddlers.

743.04 Vehicle requirements.

743.05 Prohibited places of sale.

743.06 Restrictions.

743.07 Nuisance conditions.

743.08 Noise-producing devices.

743.99 Penalty.

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CROSS REFERENCES

Definitions - see Ohio R.C. 3717.51

State license required - see Ohio R.C. 3717.52

Labeling and misrepresentation - see Ohio R.C. 3717.54

Peddlers, solicitors and canvassers - see BUS. REG. Ch. 767

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743.01 DEFINITIONS.

As used in this chapter:

(a) "Frozen desserts" includes ice cream, frozen custard, water ices, sherbet, imitation ice cream and any and all other similar frozen desserts.

(b) "Mobile frozen dessert truck" means every motor vehicle in which ice cream, popsicles, ice sherbets, or frozen desserts of any kind are carried for the purposes of retail sale on the City's streets.

(c) "Operator" means every person, firm, or corporation who or which owns, leases, contracts, or in another other fashion permits a person to operate upon the City's streets any ice cream truck for the purpose of selling frozen desserts.

(d) "Peddler" and "to peddle" mean the sale by a person moving from place to place while making, or attempting to make, the sale of frozen desserts from a vehicle or container. Each such movement, after having made a sale, shall be in a forward direction a distance of not less than twenty-five feet, and such moves shall be made at intervals of not more than five minutes, unless the peddler is actively and continuously engaged in the making of sales for a longer period of time.

743.02 ENFORCEMENT.

The enforcement of any of the provisions of this chapter shall be the responsibility of the Director of Public Safety and/or the Police Division or any duly authorized agent or employee of either.

743.03 REQUIREMENTS AND REGULATIONS OF PEDDLERS.

- (a) Any person desiring to operate a mobile frozen dessert truck shall make an application to the Department of Public Safety for and obtain an annual Mobile Frozen Dessert Vendor License prior to operating in the City. Such person shall submit a complete application on the form provided by the Safety Department, which shall include all of the following:
- (1) Name, present residential address and business address, and telephone number of the operator of the frozen dessert truck;
 - (2) The name, address, and telephone number of the business entity that owns or furnishes the frozen dessert truck or franchise to operate such truck under the business' 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 valid driver's license;
 - (5) Two (2) photographs of the applicant operator of appropriate size (2" x 2"), one of which shall be attached at all times to the license, and the other for the City's records;
 - (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 by the Department of Public Safety for the City's files and of the purpose of determining the criminal record, if any, of the applicant or any employee, or other background check acceptable to the City;
- (9) Such other information as may be reasonably required by the Department of Public Safety and Department of Public Service.
- (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 Department of Public Safety that the applicant has willfully misrepresented their identity or intention, or has violated any provision of this Chapter, 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.
- (d) The Mobile Frozen Dessert Truck 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 Director of Public Safety, or an authorized representative, should the person to whom it is issued be found to have willfully misrepresented their identity or intention, or has violated any provision of this Chapter, or has been found to have been guilty of two or more offenses under Section 743.99, 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.
- (e) The operator of a Mobile Frozen Dessert 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 Frozen Dessert 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 at an amount of \$1,000,000. The operator shall provide the City with 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 insurance shall result in a denial of the application for or revocation of the license.
- (g) There shall be two (2) operators in the mobile frozen dessert truck at all times during operation. One shall be the seller and one shall be the driver.
- (h) All persons employed as peddlers shall:
- (1) Be at least eighteen years of age;
 - (2) Be regular employees of the person selling the frozen desserts;

(3) Wear clean, washable outer garments or uniforms disclosing the name of their employer thereon;

(4) Maintain themselves in a clean and personable condition and free from contagious disease;

(5) Carry all personal credentials on their persons at all times, including a valid Ohio driver's license and proof of insurance;

(6) Display an approved City permit in each vehicle;

(7) Make payment of two hundred and fifty dollars (\$250.00) per vehicle on an annual basis from January 1 through December 31, effective January 1, 2025;

743.04 VEHICLE REQUIREMENTS.

A Mobile Frozen Dessert Truck operating in the City shall maintain the following equipment in good working order:

- (a) A sign saying "SLOW" or similar as approved by the Department of Public Safety 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;
- (b) A convex mirror mounted on the front so that the driver in the driver's normal seating position can see the area in front of the truck obscured by the hood;
- (c) A device capable of emitting a sound audible under normal conditions from a distance of not less than two hundred (200) feet when the vehicle is backing up;
- (d) Two six-inch or larger flashing amber lights in front and on top of the vehicle(s);
- (e) Two six-inch or larger flashing amber lights in the rear and on top of the vehicle(s);
- (f) A stop signal arm that can be extended horizontally from the left side of the vehicle(s) duplicating the design and size of a standard thirty-inch octagonal stop sign, as set forth in the State Manual of Uniform Traffic Control Devices. This arm shall be red and white in color and shall contain two alternately flashing lights three to five inches in diameter at the top and bottom thereof, visible at three hundred feet to the front and rear in normal sunlight upon a straight level street. The lights shall be red. The bottom of the signal arm shall be forty-two inches above the roadway.
- (g) A display on at least two sides thereof, in letters not less than two inches high, the name of the product or products, the manufacturer thereof and the name of the employer;
- (h) The vehicle(s) shall have an operable security camera both inside and outside the vehicle(s) in working order at all times, and have the ability to retain the camera footage for a thirty-day period at minimum; and

- (i) The vehicle(s) shall be of commercial metal construction, properly insulated and at all times kept and maintained in good repair and well painted, and in a clean and sanitary condition within and out.

743.05 PROHIBITED PLACES OF SALE.

No peddler of frozen desserts shall sell, attempt to sell or offer for sale any of their wares or ring chimes or bells:

- (a) Within 100 feet of any street intersection;
- (b) Within 1,000 feet of any schoolyard, play school ground or public playground during the hours when a regular or summer or play school is in session or for a period of one-half hour after the closing hour of such regular, summer or play school;
- (c) Within 1,000 feet of any church or place of worship during the period when any service is being held therein; or
- (d) Before 11:00 a.m. or after 8:00 p.m. daily.

743.06 RESTRICTIONS.

- (a) A person shall sell only when the vehicle is lawfully stopped.
- (b) A person shall sell only from the side of the vehicle away from moving traffic and as near as possible to the curb or side of the street.
- (c) A person shall not sell to another person standing in the roadway.

743.07 NUISANCE CONDITIONS.

The following actions by a vendor of frozen desserts in the City are hereby declared to be nuisances and are prohibited, but this enumeration shall not be deemed to be exclusive:

- (a) Frequent and repeated canvassing or soliciting for the sale of frozen desserts in any area or upon any street by representatives of the same organization;
- (b) Failure to keep and maintain the vehicles and the containers used for the sale of frozen desserts in this City in a clean and sanitary condition at all times;
- (c) The sale of frozen desserts by a peddler who has a communicable disease;
- (d) The sale of frozen desserts to any person under the age of twelve years who has crossed the street to the peddler's vehicle unless under the supervision of a police officer, a parent or an adult in charge of such minor;

(e) The failure to maintain a lookout for children under twelve years on the opposite side of the street from the place where the vendor's vehicle stops, and to instruct them against crossing without supervision in order to purchase a frozen dessert:

(f) The failure to supervise any person under twelve years of age who has crossed the street to purchase a frozen dessert when such person thereafter attempts to recross the street; and

(g) The departure of the vendor's vehicle from the place where a sale is made before any person under twelve years of age who has made a purchase or who has attempted to make a purchase has reached a place of safety.

743.08 NOISE-PRODUCING DEVICES.

No peddler of frozen desserts shall use any noise-producing device other than a soft chime, the limit of audibility of which shall be 100 feet from the source of such sounds, nor shall any peddler commit any breach of the peace soliciting the sale of their products.

743.99 PENALTY.

Whoever violates or fails to comply with any provision of this Chapter is guilty of a misdemeanor of the third degree. Whoever is convicted of two or more violations or fails to comply with any provision of this Chapter is guilty of a misdemeanor of the second degree. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.