

CITY OF MONTROSE
COUNTY OF WRIGHT
STATE OF MINNESOTA

ORDINANCE NO. 2020-04

AN ORDINANCE AMENDING CHAPTER 70: PEDDLERS AND SOLICITORS TO
ESTABLISH ADDITIONAL STANDARDS FOR MOBILE FOOD UNITS WITHIN THE
CITY.

THE CITY COUNCIL OF THE CITY OF MONTROSE ORDAINS:

Section 1. Chapter 70 of the City of Montrose City Code is hereby amended to read as follows:

CHAPTER 70: PEDDLERS, TRANSIENT MERCHANTS, MOBILE FOOD UNITS, AND SOLICITORS

70.01. DEFINITIONS.

- A) Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
- 1) "Mobile Food Unit" means a food and beverage service establishment that is a vehicle mounted unit, such as:
 - a) Motorized or trailered, operating no more than twenty-one (21) days annually at any one place, or operating more than twenty-one (21) days annually at any one place with the approval of the regulatory authority as defined in Minnesota Rules, part 4626.0020, subpart 70; and a self-contained unit, in which food is stored, cooked, and prepared for direct sale to the consumer.
 - b) Operated in conjunction with a permanent business licensed under Chapter 157 or Chapter 128A of the Minnesota State Statutes at the site of the permanent business by the same individual or company, and readily movable, without disassembling, for transport to another location; and a self-contained unit, in which food is stored, cooked, and prepared for direct sale to the consumer.
 - c) Food Cart: A food and beverage service establishment that is a non-motorized vehicle self-propelled by the operator.

- d) Ice Cream Truck: A motor vehicle utilized as the point of retail sales of pre -wrapped or prepackaged ice cream, frozen yogurt, frozen custard, flavored frozen water or similar frozen dessert products.
- 2) PEDDLER.
- a) A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise or other personnel property that the person is carrying or otherwise transporting.
 - b) The term PEDDLER shall mean the same as the term HAWKER.
- 3) PERSON. Any natural individual, group, organization, corporation, partnership or association. As applied to groups, organizations, corporations, partnerships and associations, the term shall include each member, officer, partner, associate, agent or employee.
- 4) REGULAR BUSINESS DAY.
- a) Any day during which the City Hall is normally open for the purpose of conducting public business.
 - b) Holidays, defined by state law, shall not be counted as REGULAR BUSINESS DAYS.
- 5) SOLICITOR.
- a) A person who goes from house-to-house, door-to-door, business-to-business, street-to-street or any other type of place-to-place, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property or services of which he or she may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time.
 - b) The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as discussed above. The term shall mean the same as the term CANVASSER.
- 6) TRANSIENT MERCHANT. A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter or empty store front for the purpose of exposing or displaying for sale, selling or attempting to

sell, and delivering, goods, wares, products, merchandise or other personal property and who does not remain or intend to remain in any one location for more than 14 consecutive days.

70.02. EXCEPTIONS TO DEFINITIONS.

- A) For the purpose of the requirements of this chapter, the terms PEDDLER, SOLICITOR and TRANSIENT MERCHANT shall not apply to any person selling or attempting to sell at wholesale any goods, wares, products, merchandise or other personal property to a retailer of the items being sold by the wholesaler. The terms also shall not apply to any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products such as baked goods and milk, nor shall they apply to any person making deliveries of perishable food and dairy products to the customers on his or her established regular delivery route.
- B) In addition, persons conducting the type of sales commonly known as garage sales, rummage sales or estate sales, as well as those persons participating in an organized multi-person bazaar or flea market, shall be exempt from the definitions of PEDDLERS, SOLICITORS and TRANSIENT MERCHANTS, as shall be anyone conducting an auction as a properly licensed auctioneer, or any officer of the court conducting a court-ordered sale. Exemption from the definitions for the scope of this chapter shall not excuse any person from complying with any other applicable statutory provision or local ordinance.

70.03. LICENSING; EXEMPTIONS.

- A) County license authorized. No person shall conduct business as a peddler, solicitor mobile food unit or transient merchant within the City limits without first having obtained the appropriate license from the county, if the county licenses peddlers, solicitors or transient merchants, as authorized by M.S. Ch. 329 as it may be amended from time to time.
- B) City license required. Except as otherwise provided for by this chapter, no person shall conduct business as either a peddler mobile food unit, or a transient merchant without first having obtained a license from the City. Solicitors need not be licensed, but are still required to register pursuant to this Chapter.
- C) Application. Application for a City license to conduct business as a peddler, mobile food unit, or transient merchant shall be made at least 14 regular business days before the applicant desires to begin conducting business. Application for a license shall be made on a form approved by the City Council and available from the office of the City Administrator/Clerk-Treasurer. All applications shall be signed by the applicant. All applications shall include the following information.

- 1) Applicant's full legal name;
- 2) All other names under which the applicant conducts business or to which applicant officially answers;
- 3) A physical description of the applicant, such as hair color, eye color, height, weight, distinguishing marks and features and the like;
- 4) Full address of applicant's permanent residence;
- 5) Telephone number of applicant's permanent residence;
- 6) Full legal name of any and all business operations owned, managed or operated by applicant, or for which the applicant is an employee or agent;
- 7) Full address of applicant's regular place of business, if any;
- 8) Any and all business related telephone numbers of the applicant;
- 9) The type of business for which the applicant is applying for a license;
- 10) Whether the applicant is applying for an annual or daily license;
- 11) The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the City, maximum 14 consecutive days for peddler or transient merchant;
- 12) Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the City, including the location where a transient merchant intends to set up business;
- 13) A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute or any local ordinance, other than traffic offenses;
- 14) A list of the three most recent locations where the applicant has conducted business as a peddler or transient merchant;
- 15) Proof of any requested county license;
- 16) Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant;
- 17) A general description of the items to be sold or services to be provided;

- 18) All additional information deemed necessary by the City Council;
 - 19) The applicant's driver's license number or other acceptable form of identification; and
 - 20) The license plate number, registration information and vehicle identification number for any vehicle to be used in conjunction with the licensed business and a description of the vehicle.
- D) Fee. All applications for a license under this chapter shall be accompanied by the fee established by the Council. Mobile food units conducting business during Montrose Days are exempt from this fee.
- E) Procedure.
- 1) Upon receipt of the completed application and payment of the license fee, the City Administrator/Clerk-Treasurer, within two regular business days, must determine if the application is complete. An application is determined to be complete only if all required information is provided.
 - 2) If the City Administrator/Clerk-Treasurer determines that the application is incomplete, the City Administrator/Clerk-Treasurer must inform the applicant of the required necessary information that is missing. If the application is complete, the City Administrator/Clerk-Treasurer must order any investigation, including background checks, necessary to verify the information provided with the application.
 - 3) Within ten regular business days of receiving a complete application, the City Administrator/Clerk-Treasurer must issue the license unless there exist grounds for denying the license under this Chapter, in which case the Administrator/ Clerk-Treasurer must deny the license. If the City Administrator/Clerk-Treasurer denies the license, the applicant must be notified in writing of the decision, the reason for denial, and of the applicant's right to appeal the denial by requesting, within 20 days of receiving notice of rejection, a public hearing before the City Council.
 - 4) The City Council shall hear the appeal within 20 days of the date of the request. The decision of the City Council following the public hearing can be appealed by petitioning the State Court of Appeals for a writ of certiorari.
- F) Duration.
- 1) An annual license granted under this chapter shall be valid for one calendar year from the date of issue.

- 2) All other licenses granted under this chapter shall be valid only during the time period indicated on the license.

G) License exemptions.

- 1) No license shall be required for any person to sell or attempt to sell, or to take or attempt to take orders for, any product grown, produced, cultivated or raised on any farm.
- 2) No license shall be required of any person going from house-to-house, door-to-door, business-to-business, street-to-street, or other type of place-to-place when the activity is for the purpose of exercising that person's state or federal Constitutional rights such as the freedom of speech, press, religion and the like, except that this exemption may be lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity.
- 3) Professional fund-raisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of this chapter.

70.04. LICENSE INELIGIBILITY.

A) The following shall be grounds for denying a license under this chapter.

- 1) The failure of the applicant to obtain and show proof of having obtained any required county license;
- 2) The failure of the applicant to truthfully provide any of the information requested by the City as a part of the application, or the failure to sign the application, or the failure to pay the required fee at the time of application;
- 3) The conviction of the applicant within the past five years from the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner; (Those violations shall include but not be limited to burglary, theft, larceny, swindling, fraud, unlawful business practices and any form of actual or threatened physical harm against another person.)
- 4) The revocation within the past five years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor or transient merchant; and/or
- 5) The applicant is found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to the existence of more than three complaints against the applicant with the Better Business Bureau, the Attorney General's Office or other similar business or consumer

rights office or agency, within the preceding 12 months, or three complaints filed against the applicant within the preceding five years.

70.05. LICENSE TRANSFERABILITY.

- A) No license issued under this chapter shall be transferred to any person other than the person to whom the license was issued.

70.06. REGISTRATION.

- A) All solicitors, and any person exempt from the licensing requirements of this chapter, shall be required to register with the City. Registration shall be made on the same form required for a license application, but no fee shall be required.
- B) Immediately upon completion of the registration form, the City Administrator/Clerk-Treasurer shall issue to the registrant a certificate of registration as proof of the registration. Certificates of registration shall be non-transferable.

70.07. RESTRICTIONS.

- A) No peddler, solicitor or transient merchant shall conduct business in any of the following manners.
 - 1) Calling attention to his or her business or items to be sold by means of blowing any horn or whistle, ringing any bell, crying out or by any other noise, so as to be unreasonably audible within an enclosed structure;
 - 2) Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk or other public right-of-way;
 - 3) Conducting business in a way as to create a threat to the health, safety and welfare of any individual or the general public;
 - 4) Conducting business before 7:00 a.m. or after 9:00 p.m.;
 - 5) Failing to provide proof of license or registration, and identification, when requested, or using the license or registration of another person;
 - 6) Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement; and (No peddler, solicitor or transient merchant shall claim to have the endorsement of the City solely based on the City having issued a license or certificate of registration to that person.)

- 7) Remaining on the property of another when requested to leave, or to otherwise conduct business in a manner a reasonable person would find obscene, threatening, intimidating or abusive.
- B) Mobile Food Units (MFUs). Mobile food units (MFUs) are required to meet the additional following standards:
1. MFU licenses issued are issued by the City Administrator / Clerk-Treasurer or a designee under the City Administrator / Clerk-Treasurer. Licenses are issued on an annual basis, and permit MFUs to operate at up to four locations in the community during the course of the year, not to exceed 21 days per location.
 2. MFUs must be licensed by the Minnesota Health Department, and must adhere to State regulations for food trucks as provided in Food Code Chapter 4626.1860 Mobile Food Establishments; Seasonal Temporary Food Stands; Seasonal Permanent Food Stands. Evidence of the State license and proof of insurance must be provided to the City as part of the local license application.
 3. With the exception of MFUs serving special events for public or institutional uses in residential districts, MFUs operations are limited to the business and industrial districts. Ice cream truck vendors may operate in all zoning districts.
 4. MFUs must be located on private property, and the applicant must provide written consent from the property owner. However, MFUs may be located in a public park with approval from the City, and ice cream trucks are allowed to operate within the public right-of-way in residential districts.
 5. Private properties may host no more than four MFUs over the course of the year.
 6. MFU sites shall be kept in a neat and orderly manner, and shall adhere to the following site and operational requirements:
 - a. Trash and/or recycling collection and cleanup must be provided. If the MFU is on public property, the trash and recycling that is generated by the MFU must be hauled off by the MFU operator.
 - b. MFUs must provide independent power supply which is screened from view. Generators are permitted.
 - c. MFUs may not maintain or use outside sound amplifying equipment, televisions or other similar visual entertainment devices, or noisemakers such as bells, horns or whistles. Ice cream trucks

traveling through a residential district may have outdoor music or noise-making devices to announce their presence.

- d. MFUs cannot obstruct the movement of pedestrians or vehicles or pose a hazard to public safety.
 - e. MFUs shall be located on an asphalt or concrete surface.
 - f. MFUs may not be located within 500 feet of existing restaurants or coffee shops, as measured from the MFU to the property line of the food service building.
 - g. MFUs must close during adverse weather conditions when shelter is not provided.
 - h. MFUs are not permitted to operate between the hours of ten o'clock (10:00) P.M. and eight o'clock (8:00) A.M.
7. Ice cream truck vendors are required to undergo a criminal background check prior to operating in the community, at the cost of the applicant.
8. If MFU sites are found to be in non-compliance with any conditions as provided in Chapter 70 of this Ordinance, the City reserves the right to revoke the MFU transient merchant license.

70.08. EXCLUSION BY PLACARD.

- A) No peddler, solicitor or transient merchant, unless invited to do so by the property owner or tenant, shall enter the property of another for the purpose of conducting business as a peddler, solicitor or transient merchant when the property is marked with a sign or placard at least four inches long and four inches wide with print of at least 48 point in size stating "No Peddlers, Solicitors or Transient Merchants," or "Peddlers, Solicitors and Transient Merchants Prohibited," or other comparable statement. No person other than the property owner or tenant shall remove, deface or otherwise tamper with any sign or placard under this section.

Section 2. This ordinance shall take effect and be in full force after its passage and publication.

ADOPTED this 10th day of August, 2020 by the City Council of the City of Montrose.

CITY OF MONTROSE

By: 
Michelle Otto, Mayor

ATTEST:

By: 
Wendy Manson, Deputy Clerk