



Legislation Text

File #: O-141-19, Version: 1

Councilman Ludeman

Enacting a new Toledo Municipal Code Chapter 746, “Mobile Food Vendors” and amending Toledo Municipal Code Chapter 745, “Peddlers”; and declaring an emergency.

SUMMARY & BACKGROUND:

Mobile food vendors are currently regulated under Chapter 745 of the Toledo Municipal Code, entitled “Peddlers.” The proliferation of mobile food vendors in recent years has made these regulations outdated and insufficient for the purposes of protecting public health and encouraging business. This has necessitated the adoption of a specific provision to the Municipal Code to ensure fair, safe and orderly operation of mobile food vendors, and to encourage economic growth within the City. With his ordinance, Chapter 745, “Peddlers” is being amended to remove regulation of mobile food vendors and a new Chapter 746, “Mobile Food Vendors” is being enacted.

NOW, THEREFORE, Be it ordained by the Council of the City of Toledo:

SECTION 1. That Chapter 745 of the Toledo Municipal Code, which reads as follows:

745.01. Definitions.

As used in this chapter:

- (a) "Goods" means all personal property of every kind and description and also includes chattels, fixtures and goods which at the time of sale or subsequently thereto are so affixed to realty as to become part thereof whether or not separable therefrom.
- (b) "Services" means work or labor of every kind and description performed for the benefit of another.
- (c) "Direct solicitation" means solicitation for sale, or sale of goods or services by any person, at the home or residence of the buyer or prospective buyer or upon and across the streets or other public places in the City, or outdoors (open-air) on occupied or unoccupied private property. Direct solicitation does not include solicitation or sales in which the buyer or prospective buyer initiated the contact between the parties for the purpose of negotiating a purchase nor to any solicitation or sale pursuant to a permit issued under the authority of Chapter 757.
- (d) "Person" means an individual, corporation, business trust, estate, trust, partnership, association or cooperative, or any other legal entity.

(1952 Code § 25-10-1; Ord. 333-77; Ord. 358-87. Passed 5-12-87.)

745.02. License required; fee; hours of business.

- (a) No person shall engage in any direct solicitation without first having procured a license pursuant to this chapter, Chapter 701 and Chapter 1313, and without paying the corresponding fees, such as, but not limited to the following categories:
 - (1) A person traveling on foot, fifty dollars (\$50.00) per year;

- (2) A person traveling with a vehicle propelled by the person, fifty dollars (\$50.00) per year;
- (3) A person traveling with a vehicle propelled by power, one hundred dollars (\$100.00) per year;
- (4) Vendors of any product, excluding food, who sell outdoors (open-air) but not on or across the streets or other public places in the City, or who open or set up, for sales of any product, on or upon any occupied or unoccupied private property, shall pay a fee of one hundred dollars (\$100.00) per location.
(Ord. 152-05. Passed 3-22-05.)

(b) No person shall engage in any direct solicitation within the corporate limits of the City during any part of a day prior to 8:00 a.m. or after 6:00 p.m., during the months of October through March, or during any part of a day prior to 8:00 a.m. or after 8:00 p.m., during the months of April through September.

(Ord. 358-87. Passed 5-12-87.)

745.03. Selling goods or merchandise from vehicles in the public right of way, or on occupied or unoccupied private property.

(a) No person, firm or corporation shall sell or offer for sale goods, wares or merchandise from vehicles, whether animal-drawn, human-propelled or motor driven, upon the streets of the City, without the proper license and unless such vehicle is stopped, parked or standing within twelve inches from the curbing of the street or highway and only then when such goods, wares or merchandise are sold from the curbside of the street or highway.

(b) No person, firm or corporation shall sell or offer for sale goods, wares, merchandise, food or any item, outdoors (open-air), on or upon occupied or unoccupied private property, without the proper license and without submitting, with the application for a license, a written and notarized statement of authorization from the owner of the property where the sales are to take place and only if such activity is not in violation with any provision of the Toledo Municipal Code.

(Ord. 358-87. Passed 5-12-87.)

(c) No person, firm, partnership or corporation shall demonstrate, sell or offer for sale, goods, wares or merchandise from vehicles, or by hand on the street or sidewalks in the Central Business District (CBD) described in Chapter 301 of the Traffic Code or upon any park area owned or supervised by the City, where the City has previously by bid authorized operation by concessionaire. Except when no concessionaire has been authorized for operation on the street or sidewalks in the CBD, food service licensees in compliance with Chapter 1719 may operate within the CBD as provided in Section 745.04 (b) and upon procuring a license as provided herein.

(Ord. 348-99. Passed 5-25-99.)

745.04. Food sales within the City.

(a) No person shall go from place to place in the City, upon or across the streets or other public places, peddling, hawking, selling or offering for sale or exchange any food or edible product, including fruit, vegetables, garden items or produce, without having first complied with this chapter and Chapter 1719, and without having procured a license as herein provided.

(b) Persons wishing to operate non-motorized pushcarts for the purpose of selling food items in the Central Business District (CBD) as described in Chapter 301 of the Traffic Code must comply with the licensing requirements of this chapter and Chapter 1719. Food sales from licensed pushcarts in the CBD shall comply with these requirements:

(1) Hours of operation will be limited to times between 6:00 a.m. and 4:00 p.m, and between 12:00 midnight and 4:00 a.m. 7 days a week. Before and after these hours, all pushcarts shall be removed from the public right-of-way daily; and

(2) Pushcart vendors must offer products for sale from the curb-side edge of the sidewalks in the CBD;

- and
- (3) Pushcart vendors shall be restricted from selling or from stopping their push cart closer than 100 feet from the entrance or doorway to a restaurant or business with a food service license; and
 - (4) Pushcart vendors must use a pushcart approved by the National Sanitary Foundation (NSF).

(Ord. 427-07. Passed 7-10-07.)

745.05. Peddlers to carry tags.

- (a) Any person who owns or operates in the City, upon or across the streets or other public places, a cart, huckster wagon, wagon or other vehicle or vehicles for the purpose of peddling, hawking, selling or offering for sale, or exchanging any fruits, vegetables, garden truck or produce at retail shall, upon proper application of a license therefor, and upon payment of the license fee be given one metal tag of the approximate size of six inches by nine inches, which tags shall be furnished by the Director of Finance. Upon such tag there shall be stamped or printed a serial number, the figures of which shall be at least three inches in height. Such tag shall be firmly attached to the cart, huckster wagon, wagon or other vehicle, nor shall such license be transferred from one individual to another.
- (b) The individual to whom such tag is issued shall place and maintain the same in a conspicuous place in plain view of the public, upon the right side of his cart, wagon or other vehicle from which such articles shall be sold or offered for sale.

(Ord. 484-86. Passed 7-1-86.)

745.06. Identification cards.

- (a) In addition to a metal tag as provided for in Section 745.05, upon the payment of the license fee therefor, there shall be issued to the individual making such application for a license to hawk or sell such fruit, vegetables, garden truck or produce, a card upon which shall be written the name of the licensee and the date of the expiration of such license. The photograph of the applicant for such license shall be affixed to such card. Such identification card may be in the following form:

License

This Is To Certify That _____ whose photograph appears below, has paid to the City of Toledo, the license fee required for _____ and that such license expires _____.
Director of Finance

- (b) Such identification card shall be carried at all times by the licensee when he is peddling, hawking, selling or offering for sale, fruits, vegetables, garden truck and produce upon the streets of the City, and shall entitle such licensee and not more than one assistant to sell such fruit, vegetables, garden truck and produce from such wagon or vehicle upon the streets of the City.

(Ord. 358-87. Passed 5-12-87.)

745.07. Weights and measures.

Such licensee shall, if the article or articles so sold or offered for sale are usually sold by weight or measure, provide himself with the proper legal standard weights and measures; all liquids shall be sold by dry measure and weight. No article usually sold by measure shall be sold by the box, crate or basket unless there is plainly stamped on the side or end of such box, crate or basket the correct capacity thereof. Such licensee shall not misrepresent the quality or condition of the article sold or offered for sale by him.

(Ord. 484-86. Passed 7-1-86.)

745.08. Selling food products from vehicles.

(a) No driver or operator of any motor vehicle shall stop such vehicle for the purpose of selling or offering for sale any food or other products, or to sell or offer for sale such merchandise at such vehicle while stopped, or to use any loudspeaker, bell or other device giving an audible signal to advertise such merchandise on any street or public right-of-way abutting any real estate which is then used as part of the school grounds of any duly accredited public or private grade or junior high school between the hours of 7:00 a.m. and 4:00 p.m., on days when such school is in session.

(b) No driver or operator of any motor vehicle shall use more than one loudspeaker, bell or other device, and such loudspeaker, bell or other device shall not have the capability or capacity to emit a signal louder than eighty decibels at full volume measured at any distance from such device for the purpose of advertising to the general public the food, product or presence of the vehicle.

(c) No driver or operator of any motor vehicle from and at which food or other products are being sold shall use any loudspeaker, bell or other device giving an audible signal to advertise such products or the presence of the vehicle while the vehicle is in motion.

(d) No driver or operator of any motor vehicle shall stop such vehicle for the purpose of selling or offering for sale at such vehicle any food products without having the following equipment mounted on the vehicle and in operation during the period of selling such products:

(1) There shall be two warning lights. Each warning light shall be double-faced, yellow in color and not less than six inches in diameter. One light shall be mounted on the roof near the left center of the roof line and the other light shall be mounted on the roof near the right center of the roof line. When operating, the lights shall flash and be clearly visible from both the front and rear at a distance of at least 300 feet. The lights shall be operated when the motor vehicle is stopped for the purpose of selling or offering for sale any food products and at no other time.

(2) There shall be two warning signs. Each warning sign shall carry the legend "CHILDREN" on the top line and "PROCEED WITH CAUTION" on the bottom line in five inch, black, block letters on a yellow background. The signs shall be a minimum of fifty inches in width and twenty inches in height. One sign shall be located on the front end of the vehicle and the other located on the rear end of the vehicle. The signs shall not extend more than two feet above nor two feet below the top roof line of the vehicle. The signs shall be located transversely so as not to obstruct the two warning lights. The signs shall form a complete warning unit with the two warning lights that can be clearly visible by motorists who approach such vehicle from the front and rear.

(e) No motorist, when approaching a parked food vending vehicle from any direction at a time when such vehicle has the yellow warning lights operating, shall fail to proceed with caution to pass such vehicle.

(f) No person shall sell or offer for sale any food or other products from a vehicle unless that vehicle is legally parked, or shall sell or offer for sale from other than the curbside of the legally parked food vending vehicle.

(g) No person shall engage in selling or offering for sale any food or other products from and at a motor vehicle between 9:00 p.m. and 9:00 a.m.

(1952 Code § 25-10-8; Ord. 674-74)

745.09. Food truck vendors.

(a) As used in this section:

(1) "Mobile Food Truck" includes:

(A) a mobile food business that serves ready to eat food or beverages from an enclosed self contained motorized vehicle. The term mobile food truck shall not include mobile food vehicles operating from place to place on the public streets as regulated under Toledo Municipal Code § 745.08.

(B) a mobile food business that serves food or beverages from a non-motorized vehicle that is normally

pulled behind a motorized vehicle. The term mobile food truck shall not include pushcarts as defined and regulated under Toledo Municipal Code § 745.04.

(2) "Person" means any person, society, club, firm, organization, corporation or limited liability company.

(b) In addition to all other applicable requirements of Chapter 745, no person shall operate a mobile food truck without first having been issued a mobile food truck registration from the Director of Finance.

(1) Applications for registration of a mobile food truck shall contain the following:

(A) A certificate of tax compliance on file with the City of Toledo Division of Taxation;

(B) A food establishment operation license issued under Chapter 1719 of this code;

(C) Proof of a current State of Ohio vendors license;

(D) Proof of liability insurance in the amount of one million (\$1,000,000.00) dollars.

(2) The owner of a food truck or mobile food trailer must obtain a registration for each vehicle owned and operated. A certificate of registration will be issued for display in each truck and /or trailer. Registrations issued under this section shall be valid for one year from the date of issue.

(3) All registrations shall have an application fee of \$50.00.

(c) Any person who has been denied a mobile food truck registration by the Director of Finance shall have the right to appeal the denial of a registration as provided under § 701.10 of this chapter.

(d) Whoever violates this section shall be guilty of a minor misdemeanor.

(Ord. 88-16. Passed 5-24-16.)

745.99. Penalty.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the fourth degree. Each day that any person engages in selling any goods without the proper license, as provided in this chapter, shall constitute a separate offense and, upon failure to obey, abide by or comply with a cease and desist order issued by the City Police, the City Police are authorized to confiscate the goods and place the goods in storage until a license, pursuant to this chapter, is obtained by the non-licensed party. Any and all costs incurred by the City in confiscating and storing any goods being sold without a proper license, as provided in this chapter, will be assessed against the offending party and such goods may be sold by the City, after completion of a two-week waiting period, to recover its costs.

is hereby repealed.

SECTION 2. That a new Chapter 745, "Peddlers" is hereby enacted as follows:

745.01. Definitions.

As used in this chapter:

(a) "Goods" means all personal property of every kind and description and also includes chattels, fixtures and goods which at the time of sale or subsequently thereto are so affixed to realty as to become part thereof whether or not separable therefrom. For the purposes of this Chapter, "Goods" does not include beverages or ready to eat food sold by Mobile Food Vendors subject to Chapter 746 herein.

(b) "Services" means work or labor of every kind and description performed for the benefit of another.

(c) "Direct Solicitation" means solicitation for sale, or sale of Goods or Services by any person, at the home or residence of the buyer or prospective buyer or upon and across the streets or other public places in the City, or outdoors (open-air) on occupied or unoccupied private property. Direct Solicitation does not include solicitation or sales in which the buyer or prospective buyer initiated the contact between the parties for the purpose of negotiating a purchase nor to any solicitation or sale pursuant to a permit issued under the authority of Chapter 757.

(d) "Person" means an individual, corporation, business trust, estate, trust, partnership, association or

cooperative, or any other legal entity.

745.02. License required; fee; hours of business.

(a) No Person shall engage in any Direct Solicitation without first having procured a license pursuant to this chapter, Chapter 701 and Chapter 1313, and without paying the corresponding fees, such as, but not limited to the following categories:

- (1) A Person traveling on foot, fifty dollars (\$50.00) per year;
- (2) A Person traveling with a vehicle propelled by the Person, fifty dollars (\$50.00) per year;
- (3) A Person traveling with a vehicle propelled by power, one hundred dollars (\$100.00) per year;
- (4) Vendors of any Goods who sell outdoors (open-air) but not on or across the streets or other public places in the City, or who open or set up, for sales of any product, on or upon any occupied or unoccupied private property, shall pay a fee of one hundred dollars (\$100.00) per location.

(b) No person shall engage in any Direct Solicitation within the corporate limits of the City during any part of a day prior to 8:00 a.m. or after 6:00 p.m., during the months of October through March, or during any part of a day prior to 8:00 a.m. or after 8:00 p.m., during the months of April through September.

745.03. Selling Goods from vehicles in the public right of way, or on occupied or unoccupied private property.

(a) No Person shall sell or offer for sale Goods from vehicles, whether animal-drawn, human-propelled or motor driven, upon the streets of the City, without the proper license and unless such vehicle is stopped, parked or standing within twelve inches from the curbing of the street or highway and only then when such Goods are sold from the curbside of the street or highway.

(b) No Person shall sell or offer for sale Goods outdoors (open-air), on or upon occupied or unoccupied private property, without the proper license and without submitting, with the application for a license, a written and notarized statement of authorization from the owner of the property where the sales are to take place and only if such activity is not in violation with any provision of the Toledo Municipal Code.

(c) No Person shall demonstrate, sell or offer for sale, Goods from vehicles, or by hand on the street or sidewalks in the Central Business District (CBD) described in Chapter 301 of the Traffic Code or upon any park area owned or supervised by the City, where the City has previously by bid authorized operation by concessionaire.

745.99. Penalty.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the fourth degree. Each day that any Person engages in selling any Goods without the proper license, as provided in this chapter, shall constitute a separate offense and, upon failure to obey, abide by or comply with a cease and desist order issued by the City Police, the City Police are authorized to confiscate the Goods and place the Goods in storage until a license, pursuant to this chapter, is obtained by the non-licensed party. Any and all costs incurred by the City in confiscating and storing any Goods being sold without a proper license, as provided in this chapter, will be assessed against the offending party and such Goods may be sold by the City, after completion of a two-week waiting period, to recover its costs.

SECTION 3. That a new Chapter 746 to the Toledo Municipal Code is hereby enacted as follows:

746 Mobile Food Vendors

746.01. Definitions.

For purposes of this Chapter, the following words shall have the meanings respectively ascribed to them, unless a different meaning is clearly indicated by the context.

- (a) Mobile Food Vending. The selling or offering to sell beverages and/or ready-to-eat food which has been cooked, wrapped, packaged, processed, or portioned for service, sale, or distribution from a commercially manufactured, motorized or otherwise mobile vehicle, truck, or cart that is readily movable.
- (b) Mobile Food Vending Unit. A commercially manufactured, motorized or otherwise mobile vehicle that is readily movable, and from which beverages and/or ready-to-eat food is cooked, wrapped, packaged, processed or portioned for service, sale or distribution.
- (c) Mobile Food Vendor. Any person who sells or offers for sale food or beverages from a Mobile Food Vending Unit in any public, private or restricted space.

746.02. General Operational Standards for Mobile Food Vendors

- (a) Mobile Food Vendors must submit an application on a form to be provided by the Mayor or his or her designee to the Department of Finance, Division of Taxation to operate any Mobile Food Vending Unit.
 - (1) Applications for registration of a Mobile Food Vending Unit shall contain the following:
 - i. A certificate of tax and public utility compliance on file with the City of Toledo Division of Taxation, and Division of Utilities Administration;
 - ii. A retail food establishment operation license issued under Chapter 3717 of the Ohio Revised Code.
 - iii. Proof of a current State of Ohio Vendor license pursuant to R.C. 5739.01 *et seq.*;
 - iv. Proof of general liability insurance in the amount of One Million Dollars (\$1,000,000.00) for motorized trucks or trailers intended for Mobile Food Vending or Three Hundred Thousand Dollars (\$300,000.00) for Pushcarts.
 - (2) The owner of a Mobile Food Vending Unit must obtain a certificate of registration for each unit owned and operated. A certificate of registration will be issued for display in each Mobile Food Vending Unit. Registrations issued under this section shall be valid for one (1) year from the date of issue.
 - (3) All registrations shall have an application fee of \$50.00.
 - (4) Any person who has been denied a Mobile Food Vending certificate of registration by the Director of Finance may appeal as provided under Section [701.10](#) <http://library.amlegal.com/nxt/gateway.dll?> herein.
- (b) Mobile Food Vendors may not operate in any manner that blocks, obstructs, or restricts the free passage of vehicles or pedestrians in the lawful use of the sidewalks or highways or ingress or egress to the abutting property. Mobile Food Vendors shall maintain a clear path of travel on the sidewalk pursuant to the Americans with Disabilities Act, as amended (“ADA”) free of customer queuing, signage and/or all portions of the vehicle for clear movement of pedestrians.
- (c) Mobile Food Vendors must keep the area within fifteen feet (15’) of their Mobile Food Vending Unit free from all litter and debris arising from their operations, including the litter which arises from actions of customers in disposing of wrapping or packaging materials on food and/or merchandise sold by the vendor. Mobile Food Vendors not operating on a place-to-place basis as specified in Section 746.03 must provide receptacles for trash and litter, and recycling within fifteen feet (15’) of their location during hours of operation. While operating, Mobile Food Vendors must maintain these receptacles in a manner that prevents waste from overflowing.
- (d) Mobile Food Vendors shall be responsible for removing all waste generated by the internal operations of their unit. Such waste shall not be placed in public trash receptacles, city streets or drains, except those designated by the City for that use.
- (e) Mobile Food Vendors shall not utilize the city's electrical outlets, unless specifically authorized by the

city; such authorizations shall be provided on forms provided by the Mayor or his designees with fees and costs set pursuant to his reasonable discretion.

- (f) Merchandise and/or food may not be displayed or sold to the operator or occupants of vehicles stopped in traffic.
- (g) Mobile Food Vendors shall be considered a fixed source for noise and subject to the limitations specified in Section 507.14 of this code. This includes, but is not limited to the use of loudspeakers, bells and generators or other devices
- (h) No Mobile Food Vendor shall sell or offer for sale any food or other products from a Mobile Food Vending Unit unless it is legally parked, or shall sell or offer for sale products other than in the direction of the curbside if operating from an open public street.
- (i) Mobile Food Vendors must remain with their Mobile Food Vending Unit at all times that the Mobile Food Vending Unit is parked on an open public street.

746.03. Mobile Food Vending Units that operate on a short-term, place-to-place basis.

- (a) In addition to the requirements of Section 746.02, this section shall apply to Mobile Food Vending Units that are operated from place to place upon a street, alley, or road with the intent to vend on a short-term, temporary basis at each place.
 - (1) No Mobile Food Vendor of any such Mobile Food Vending Unit shall stop such vehicle for the purpose of selling or offering for sale at such vehicle any food products without having the following equipment mounted on the vehicle and in operation during the period of selling such products:
 - i. There shall be two warning lights. Each warning light shall be double-faced, yellow in color and not less than six inches in diameter. One light shall be mounted on the roof near the left center of the roof line and the other light shall be mounted on the roof near the right center of the roof line. When operating, the lights shall flash and be clearly visible from both the front and rear at a distance of at least 300 feet. The lights shall be operated when the motor vehicle is stopped for the purpose of selling or offering for sale any food products and at no other time.
 - ii. There shall be two warning signs. Each warning sign shall carry the legend “CHILDREN” on the top line and “PROCEED WITH CAUTION” on the bottom line in five inch, black, block letters on a yellow background. The signs shall be a minimum of fifty inches in length and the other located on the rear end of the vehicle. The signs shall not extend more than two feet above nor two feet below the top roof line of the vehicle. The signs shall be located transversely so as not to obstruct the two warning lights. The signs shall form a complete warning unit with the two warning lights that can be clearly visible by motorists who approach such vehicle from the front and rear.
 - (2) A Mobile Food Vendor operating in this manner may not use any loudspeaker, bell, or other device to emit an audible signal to advertise his or her products or the presence of the Mobile Food Vending Unit while the Mobile Food Vending Unit is in motion.
 - (3) No motorist, when approaching any such parked Mobile Food Vending Unit from any direction at a time when such vehicle has the yellow warning lights operating, shall fail to proceed with caution to pass such vehicle.

Sec. 746.99. Mobile Food Vending; Penalties.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the fourth degree. Each day that any person engages in selling any goods without the proper permit/privilege, as provided in this chapter, shall constitute a separate offense.

SECTION 4. That this Ordinance is declared to be an emergency measure and shall be in force and effect from and after its passage. The reason for the emergency lies in the fact that it is necessary for the immediate preservation of the public peace, health, safety and property.

Vote on emergency clause: yeas _____, nays _____.

Passed: _____, as an emergency measure: yeas _____, nays _____.

Attest: _____
Clerk of Council

President of Council

Approved: _____

Mayor

I hereby certify that the above is a true and correct copy of an Ordinance passed by Council

_____.

Attest: _____
Clerk of Council