

ORDINANCE NO. 532

**AN ORDINANCE AMENDING TITLE XI (BUSINESS REGULATIONS) CHAPTER 115
(PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS) OF THE CITY OF MILACA
CODE OF ORDINANCES**

**CHAPTER 115: PEDDLERS, SOLICITORS, TRANSIENT MERCHANTS, AND MOBILE FOOD
UNITS**

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Cross-reference:

Fees, Charges, and Rates, see Ch. 34

Criminal History License Background Investigations, see § 33.20

§ 115.01 DEFINITIONS.

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.

PEDDLER. 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 personal property that the person is carrying or otherwise transporting. The term PEDDLER shall mean the same as the term HAWKER.

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.

REGULAR BUSINESS DAY. Any day during which the City Hall is normally open for the purpose of conducting public business. Holidays defined by state law shall not be counted as **REGULAR BUSINESS DAYS**.

SOLICITOR. 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. 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**.

TRANSIENT MERCHANT. A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty storefront 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.

MOBILE FOOD UNIT. A food and beverage service establishment that is a vehicle mounted unit, either motorized or trailered, and readily movable, without disassembling, for transport to another location. The unit can operate no more than 21 days annually at any one place unless it is operated at the site of and in conjunction with a permanent business licensed under Minnesota Statutes Chapter 157 or Chapter 28A. All mobile food units must be operated in compliance with the Minnesota Food Code.

§ 115.02 EXCEPTIONS TO DEFINITIONS.

- (A) For the purpose of the requirements of this chapter, the terms **PEDDLER**, **SOLICITOR**, **TRANSIENT MERCHANT**, and **MOBILE FOOD UNIT** 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, TRANSIENT MERCHANT, and MOBILE FOOD UNIT, 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.

(C) Persons going door to door selling or soliciting the sale of personal property or services, or soliciting money to raise funds for any local school, club, church, youth group or civic improvement activity is exempt from the definitions of PEDDLERS, SOLICITORS, TRANSIENT MERCHANTS, and MOBILE FOOD UNITS.

(Am. Ord. 385, passed 12-17-09)

§ 115.03 LICENSING; EXEMPTIONS.

(A) City license required. Except as otherwise provided for by this chapter, no person shall conduct business as either a peddler, solicitor, transient merchant, or a mobile food unit without first having obtained a license from the city.

(B) Application. Application for a city license to conduct business as a peddler, solicitor, transient merchant, or mobile food unit 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 Manager-Clerk. 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 the applicant officially answers;
- (3) Full address of applicant's permanent residence;
- (4) Telephone number of applicant's permanent residence;
- (5) 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;
- (6) Full address of applicant's regular place of business (if any);
- (7) Any and all business-related telephone numbers of the applicant;
- (8) The type of business for which the applicant is applying for a license;

(9) Whether the applicant is applying for a monthly or daily license;

(10) 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 or six-month maximum);

(11) 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 or mobile food unit intends to set up business;

(12) 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;

(13) A list of the three most recent locations where the applicant has conducted business as a peddler, solicitor, transient merchant, or mobile food unit;

(14) Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant or mobile food unit;

(15) A general description of the items to be sold or services to be provided;

(16) All additional information deemed necessary by the City Council;

(17) A copy of the applicant's driver's license number or other acceptable form of identification; and

(18) 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.

(19) Certificate of Insurance;

(20) Copy of MN Department of Health or Department of Agriculture License; and

(21) Completed and signed Background Investigation Consent Form;

(C) Fee. All applications for a license under this chapter shall be accompanied by the fee established in Chapter 34 of this code, as it may be amended from time to time.

(D) Procedure. Upon receipt of the completed application and payment of the license fee, the City Manager-Clerk must determine if the application is complete. An application is determined to be complete only if all required information is provided. If the Manager-Clerk determines that the application is incomplete, the Manager-Clerk must inform the applicant of the required necessary information that is missing. If the application is complete, the Manager-Clerk must order any investigation, including background checks, necessary to verify the information provided with the application. Upon completion of the background check, the Manager-Clerk must issue the license unless there exists grounds for denying the license under § 115.04, in which case the Manager-Clerk must deny the

license. If the Manager-Clerk denies the license, the applicant must be notified in writing via letter or email 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. 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.

(E) Duration. All licenses granted under this chapter shall be valid only during the time period indicated on the license.

(F) 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 fundraisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of this chapter.

(Am. Ord. 385, passed 12-17-09; Am. Ord. 426, passed 5-18-17) Penalty, see § 10.99

§ 115.04 LICENSE INELIGIBILITY.

The following shall be grounds for denying a license under this chapter:

(A) 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, failure to pass a background check, or the failure to pay the required fee at the time of application;

(B) 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;

(C) The revocation within the past five years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor, transient merchant, or mobile food unit; or

(D) 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.

(Am. Ord. 426, passed 5-18-17)

§ 115.05 LICENSE SUSPENSION AND REVOCATION.

(A) Generally. Any license issued under this chapter may be suspended or revoked at the discretion of the City Manager-Clerk or City Council for violation of any of the following:

- (1) Fraud, misrepresentation, or incorrect statements on the application form;
- (2) Fraud, misrepresentation, or false statements made during the course of the licensed activity;
- (3) Conviction of any offense for which granting of a license could have been denied under § 115.04; or
- (4) Violation of any provision of this chapter.

(B) Multiple persons under one license. The suspension or revocation of any license issued for the purpose of authorizing multiple persons to conduct business as peddlers, solicitors, transient merchants, or mobile food units on behalf of the licensee shall serve as a suspension or revocation of each authorized person's authority to conduct business as a peddler, solicitor, transient merchants, or mobile food units on behalf of the licensee whose license is suspended or revoked.

(C) Notice. Prior to revoking or suspending any license issued under this chapter or right to solicit business within the city, the city shall provide the license holder or solicitor with written notice of the alleged violations and inform the licensee or solicitor of his or her right to a hearing on the alleged violation. Notice shall be delivered in person, by email, or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.

(D) Public hearing. Upon receiving the notice provided in division (C) of this section, the licensee shall have the right to request a public hearing. If no request for a hearing is received by the City Manager-Clerk within ten regular business days following the service of the notice, the city may proceed with the suspension or revocation. For the purpose of mailed notices, service shall be considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated time frame, a hearing shall be scheduled within 20 days from the date of the request. Within three regular business days of the hearing, the City Council shall notify the licensee of its decision.

(E) Emergency. If, in the discretion of the City Manager-Clerk or City Council, imminent harm to the health or safety or economic interests of the public may occur because of the actions of a peddler, solicitor or transient merchant, whether licensed or unlicensed under this chapter, City Manager-Clerk or the City Council may immediately suspend the person's license, if any, or right to solicit business within the city and provide notice of the right to show cause at a subsequent public hearing as prescribed in division (C) of this section why the license or right to solicit business in the city should not be terminated.

(F) Appeals. Any person whose license is suspended or revoked under this section shall have the right to appeal that decision in court.

(Am. Ord. 385, passed 12-17-09; Am. Ord. 426, passed 5-18-17) Penalty, see § 10.99

§ 115.06 LICENSE TRANSFERABILITY.

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

Penalty, see § 10.99

§ 115.07 PROHIBITED ACTIVITIES.

No peddler, solicitor, transient merchants, or mobile food units shall conduct business in any of the following manners:

(A) 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;

(B) Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk, or other public right-of-way;

(C) Conducting business in a way as to create a threat to the health, safety, and welfare of any individual or the general public;

(D) Conducting business before 10:00 a.m. or after 8:00 p.m.;

(E) Failing to provide proof of license or registration, and identification, when requested; or using the license or registration of another person;

(F) Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor, transient merchants, or mobile food units 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; or

(G) 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.

(H) Restrictions on Mobile Food Units

(1) Mobile food units are prohibited from vending activity on any public street or private property within 150' of the nearest property line of any restaurant within the City of Milaca.

(2) Mobile food units are prohibited from vending activities within 300' of a community event for which the City has issued a Special Event Permit, unless they are specifically authorized by the event sponsor to participate in the event. The terms of the Special Event Permit shall apply.

(3) Mobile food units are allowed to operate on private property as expressly authorized by the owner/manager/agent of the private property.

Penalty, see § 10.99

(Am. Ord. 426, passed 5-18-17)

§ 115.08 EXCLUSION BY PLACARD.

No peddler, solicitor, transient merchants, or mobile food units, 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, transient merchants, or mobile food units 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, Transient Merchants, or Mobile Food Units or "Peddlers, Solicitors, Transient Merchants, and Mobile Food Units 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.

Penalty, see § 10.99

§ 115.99 VIOLATIONS; CONVICTIONS.

A violation of any provision of this chapter are subject to penalties under § 10.99 punishable as a misdemeanor with a fine of \$250 and each day the violation occurs is a separate offense.

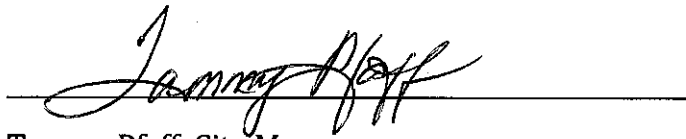
(Ord. 426, passed 5-18-17)

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Mayor Dave Dillan

ATTEST:



Tammy Pfaff, City Manager

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