

CITY OF VANDALIA
MONTGOMERY COUNTY, OHIO

ORDINANCE 14-13

AN ORDINANCE AMENDING CHAPTER 852 OF THE CODIFIED ORDINANCES OF THE CITY OF VANDALIA REGARDING PEDDLERS SOLICITORS AND CANVASSERS IN ORDER TO INCLUDE PROVISIONS RELATING TO MOBILE FOOD VENDORS.

WHEREAS, Prior to 2014, Chapter 852 of the Vandalia Codified Ordinance remained substantial unchanged since it was drafted in 1962 and was in need of updating given recent changes in the law regarding solicitors, peddlers and canvassers, and

WHEREAS, in Ordinance 14-01 Council repealed and replaced all of Chapter 852 in order to improve the quality of life and economic vitality of the City of Vandalia; to protect the safety of the general public against abusive conduct of persons engaged in door to door commercial solicitation; establish reasonable and uniform regulations for such solicitation; To protect privacy of Vandalia Citizens; to better assist the City when receiving inquiries fro citizens regarding door to door solicitors, help prevent crime and fraud by regulating persons requesting money from citizens; while respecting the constitutional rights of free speech for all citizens; and

WHEREAS, Council desires to amend Chapter 852 further in order to add provisions relating to Mobile Food Vendors within the City of Vandalia.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL, OF THE CITY OF VANDALIA, STATE OF OHIO, A MAJORITY OF THE ELECTED MEMBERS CONCURRING THAT:

Section 1. That Chapter 852 of the Codified Ordinances of the City of Vandalia is hereby amended to read as set forth on the attached Exhibit A which is incorporated herein by this reference; to the extent any provisions in the current Chapter 852 are inconsistent with this ordinance, such inconsistent provisions are hereby repealed.

Section 2. It is found and determined that all formal actions of the City Council concerning and relating to the adoption of this ordinance were conducted in open meetings of this Council, and that all deliberations of this Council and of any of its committees resulting in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3. It is the intent of City Council that if any provision of this legislation, or the application thereof to any person or circumstance, is held to be invalid, the remaining sections or provisions and the application of such sections and provisions shall not be affected thereby.

Section 4. This ordinance shall go into effect at the earliest time provided by law.

Passed this 21st day of April, 2014.

APPROVED:

Arlene J. Setzer, Mayor

ATTEST:

Jon Crusey
Clerk of Council

EXHIBIT A
TO ORDINANCE 14-13

852.01 DEFINITIONS

As used in this chapter:

(a) "Person" includes the singular and the plural and also means and includes any person, firm, corporation, limited liability company, entity, association, club, co-partnership, society or any other organization.

(b) "Peddler" means any person, whether a resident of the City or not, excluding a Mobile Food Vendor, traveling either by foot, wagon, automotive vehicle or any other type of conveyance, from place to place, from house to house or from street to street, carrying, conveying or transporting goods, including but not limited to wares, services, merchandise, meats, cheese, vegetables, fruits, garden truck, farm products or provisions, offering or exposing the same for sale or making sales and delivering articles to a purchaser, or who, without traveling from place to place shall sell or offer for sale from a wagon, automotive vehicle or other conveyance.

(c) "Solicitor" means any individual, taking or attempting to take orders for sale of goods, wares, and merchandise of any nature whatsoever for future delivery or for services to be furnished or performed in the future, and/or providing information about goods, wares, merchandise or services of a commercial nature, whether or not such person has, carries or exposes for sale a sample of the subject of such sale or whether he or she is collecting advance payment on such sales or not.

The definitions in (b) and (c) above include any person who, for himself or herself for another person, hires, leases, uses or occupies any building, structure, room, tent, shop or any other place within the City for the sole purpose of exhibiting samples and taking orders for future delivery.

(d) "Canvasser" means any individual that engages in the non-commercial distribution of ideas, pamphlets, literature, and the like, or the collection of signatures or support for non-commercial purpose or cause.

(e) "Specified Criminal Act," means a felony or misdemeanor involving force, violence, fraud, theft, or a sexual oriented offense crimes, sexual abuse, rape, gross sexual imposition. These crimes must include the element of knowledge to constitute a "Specified Criminal Act" on the part of the accused.

(f) "City Manager" shall mean the City Manager of the City of Vandalia or his or her designee.

(g) "Mobile Food Vendor" means a person or entity engaged in the business of peddling, displaying, selling, offering for sale or bartering from manually propelled vehicles (including mobile cooker BBQ pits) or by motor or animal driven vehicles any food, food products, confection or beverages

(h) "Mobile food vending license" means the annual license issued by the City of Vandalia to a vendor permitting operation of a mobile food vehicle within the City of Vandalia.

(i) "Vendor License" means the license, other than Mobile Food Vending License, required by this Chapter.

(j) "Ice Cream Trucks" means a mobile food vendor which sell only ice cream, any pre-packaged, soft-serve or hand-dipped ice cream, frozen milk, frozen dairy or water-based food or confection products

852.02 EXCEPTIONS.

(a) The owner of any product of his or her own raising, or the manufacturer of any article manufactured by him, as described in section 715.63 of the Ohio Revised Code, or children or persons engaged in the sale of goods or services for a school, church or other local nonprofit organization, shall not be required to obtain a License to vend and sell in any way any such article or product; however, a written permit for children or persons engaged in the sale of goods or services for a school, church or other local nonprofit organization, shall be obtained from the City Manager.

(b) The licensing and permitting provisions of this chapter shall not apply to a Canvasser.

(c) Mobile Food Vendors conducting business at festival or carnival permitted under Chapter 854 of the Vandalia Code shall not be required to obtain a Mobile Food Vending License for purposes of the sales at such festival or carnival, but shall have all required State or County required permits and licenses.

852.03 PERMIT AND LICENSE REQUIRED.

No solicitor or peddler as defined in Section 852.01 shall engage in such business within the corporate limits of the City, without first obtaining a license or a permit, as applicable, therefor in compliance with the provisions of this chapter. No Mobile Food Vendor shall engage in such business within the corporate limits of the City, without first obtaining a Mobile Food Vending License in compliance with the provisions of this chapter.

852.04 APPLICATION

Applicants for a permit and license under this chapter must file with the City Manager a sworn application in writing, in duplicate, on a form to be furnished by the City Manager, which shall give the information below. With respect to a License, if more than one person shall be vending, soliciting or peddling for a particular business, each individual person shall be deemed a separate applicant: With respect to a Permit, the City Manager may issue a single permit for an organization or family.

- (a) Name and description of the applicant;
- (b) Permanent address of the applicant;
- (c) A brief description of the nature of the business and the goods and/or services to be sold;
- (d) For a License and Mobile Food Vending License, if employed, the name and address of the employer, together with credentials establishing the exact relationship; For a Permit, the name of the organization for which the goods and/or services are being sold
- (e) For a License and Permit, the length of time for which the right to do business is desired;
- (f) For a License, the place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time such application is filed and the proposed method of delivery;
- (g) For a License and Mobile Food Vending License, the following additional information:
 - (1) A photograph of the applicant, taken within sixty days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches showing the head and shoulders of the applicant in a clear and distinguishing manner;
 - (2) Description, vehicle license number and state of registration of each vehicle, if any, that will be operated under the license being applied for.
 - (3) A statement as to whether or not the applicant has been convicted of a Specified Criminal Act.
- (h) For a Mobile Food Vending License only, the following additional information:
 - (1) A valid copy of all necessary licenses, permits or certificates required by the Montgomery County Public Health organization, Montgomery County, the State of

Ohio or any subsidiary enforcement agencies or departments thereof, including, but not limited to: all appropriate food service permits,

(2) A valid Ohio Department of Motor Vehicle Registration to the vehicle being used by the Mobile Food Vendor, and valid Driver's Licenses of all of the vehicle operators.

(3) A statement signed by the applicant and by an officer or of the owner of the firm for whom the applicant works, that the applicant and the firm whom the applicant works shall hold harmless the City and its officers and employees, and shall indemnify and hold harmless the City and its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under terms of the license. The applicant and the firm for whom the applicant works shall furnish and maintain such public liability, food products liability, and property insurance, as will protect the applicant, the firm for whom the applicant works and the City from all claims for damage to property or bodily injury, including death, which may arise from the operations under the license or in connection therewith. Such insurance shall provide coverage of not less than one million dollars (\$1,000,000) per occurrence. The policy shall further provide that it may not be cancelled except upon thirty (30) days written notice served upon the City Manager. A license issued pursuant to the provisions of this section shall be invalid at any time the insurance required herein is not maintained and evidence of continuing coverage is not filed with City Manager.

852.05 FEES FOR LICENSE AND INVESTIGATION.

(a) At the time of filing the application for a license, a non-refundable fee of fifty dollars (\$50.00) shall be paid to the City Manager to cover the cost of investigation and any other costs that may be incidental thereto. If a license is granted, the fifty dollar (\$50.00) fee shall be credited toward the fee required in subsection (c) hereof.

(b) The annual license fees herein provided for shall be assessed on a calendar year basis, provided, for any license application received on and after July 1 of each year, the amount of the fee for such license shall be one-half of the annual amount stipulated.

(c) The fee for an annual license shall be the sum of one hundred dollars (\$100.00) annually.

(d) There shall be no fee for a permit. All permits shall be for a specific duration set forth in the permit.

852.06 INVESTIGATION AND ISSUANCE.

(a) Upon receipt of a license application, the original shall be referred to the Chief of Police, or his designee, who shall cause such investigation of the applicant.

(b) The Chief of Police, or his designee, shall approve the license to be issued by the City Manager if:

- (i) All of the statements made in the application are true.
- (ii) The applicant has provided a valid photographic identification card.
- (iii) The applicant has not been convicted of a "Specified Criminal Act" for which: (1) less than two years have elapsed since the date of conviction, the date of completion of probation, or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense for the Specified Criminal Acts; (2) less than five years have elapsed since the date of conviction, the date of completion of probation, parole or community control, or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense, for the Specified Criminal Acts; (3) less than five years have elapsed since the date of conviction, that date of completion of probation, parole or community control, or the date of release from confinement, whichever is the later date, if the convictions are of two or more misdemeanor offenses arising out of different incidents for Specified Criminal Acts offenses occurring within any twenty-four month period. The fact that a conviction is being appealed shall have no effect on disqualification of the Applicant. An Applicant who has been convicted of the above described Specified Criminal Acts may qualify for a solicitation license only when the time period required above has elapsed.

(iv) All materials required to be provided with the application have been provided

(c) If the Chief of Police or his designee, denies the license application, he/she shall promptly notify the City Manager, who in turn shall promptly notify the Applicant of the denial in writing and state the reason(s) for the denial.

(d) The City Manager, shall issue a permit upon receipt of a completed permit application. The City Manager shall approve or deny a License Application within two (2) business days from receipt of a completed application.

852.07 LICENSE AND PERMIT TRANSFER.

Licenses and permits issued pursuant to this chapter shall confer authority only upon the person to whom issued and no person except the holder of the license or permit whose name is endorsed thereon shall make use thereof. No transfer of such license shall be authorized or permitted.

852.08 NOISES AND SPEAKING DEVICES.

No peddler, mobile food vendor, solicitor or canvasser nor any person in his or her behalf, shall shout, make any outcry, blow a horn, ring a bell or use any sound device, including any loud speaking radio or sound amplifying system, upon any of the streets,

alleys, parks or other public places or upon any private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell.

852.09 USE OF STREETS.

No peddler, mobile food vendor or solicitor has any exclusive right to the use of any of the public streets, or areas of the City. Unless expressly provided in the license issued by the City, no person shall make any sales upon the public streets, alleys, parks or other public places in the City and consummation of sales of such licensees must be off of the public ways and on private property. This prohibition to the use of the streets, avenues, alleys, parks or other public places applies to the processing and/or manufacturing of any product which is being transported on such public streets. Ice Cream Trucks, are excluded from the prohibition of this section 852.09 provided that they are licensed, that they vend only when the ice cream truck or vehicle is lawfully stopped and only from the side of the truck away from moving traffic and as near as possible to the curb, and that no sales are made to persons standing in the roadway that is open for public travel.

852.10 EXHIBITION OF LICENSE.

Any licensee under this chapter may be required to exhibit his or her license at the request of any resident of the City. Mobile food vendors shall have the mobile food vending license with them at all times while conducting business in the City.

852.11 DUTY OF POLICE TO ENFORCE.

Any police officer of the City shall require any person seen peddling or, soliciting and who is not known by such officer to be duly licensed to produce his or her license, and shall enforce the provisions of this chapter against any person found to be violating them.

852.12 RECORDS OF VIOLATION.

The Chief of Police shall report to the City Manager all convictions for violations of this chapter, and the City Manager shall maintain a record for each license issued and record the reports of violation thereon.

852.13 REVOCATION; NOTICE AND HEARING.

(a) Permits and licenses issued under this chapter may be revoked by the City Manager after notice and hearing for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application;

(2) Fraud, misrepresentation or false statement made in the course of carrying on of the licensed or permitted business;

(3) Any violation of this chapter;

(4) Conviction of a Specified Criminal Act by a licensee or person working under a permit. It shall be the duty of a permit holder to make sure no persons peddling or soliciting under such permit has been convicted of a Specified Criminal Act as described in 852.06(b)(iii); or

(5) Conducting the licensed or permitted business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(b) Notice of the hearing for revocation of a license or permit shall be given in writing, setting forth specifically the grounds of complaint and the time and notice of hearing. Such notice shall be personally delivered to the licensee/permittee or mailed, postage prepaid, to the licensee/permittee at the address given on the application at least five days prior to the date set for hearing. The hearing regarding revocation shall be at the City Office and determined by the City Manager. The decision of the City Manger on revocation shall be made provided to the licensee/permittee within 10 days of the hearing and may be appealed to the License Appeal Board as provided in this Chapter.

852.14 LICENSE APPEAL BOARD.

There is hereby created a License Appeal Board, consisting of the Finance Director, the City Attorney and a third member, a City resident, to be selected by the Finance Director and City Attorney. Any person aggrieved by denial of a permit or license or revocation of same, shall have a right of appeal to the License Appeal Board. Such appeal shall be taken by filing with the City Manager's office within fourteen days after notice of the action complained of, by a written statement setting forth fully the grounds for the appeal. A response requesting an appeal hearing shall be deemed to have been received when delivered to Vandalia City Hall during regular business hours. If no response requesting an appeal hearing is received by the City within said fourteen (14) days, the action shall become final. The License Appeal Board shall promptly set a time and place for a hearing and such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in Section 852.13 for notice of hearing on revocation. The decision and order of the Board on such appeal shall be final and conclusive. At any such appeal hearing, the aggrieved party shall have the opportunity to present evidence and witnesses on his or her behalf; may appear and be heard in person, or by his/her attorney, in opposition to the decision and do any of the following: (i) present his/her positions, arguments and contentions; (ii) offer and examine

witnesses and present evidence in support; (iii) cross-examine witnesses purporting to refute respondent's position, arguments and contentions; and (iv) offer evidence to refute evidence and testimony offered in opposition to his/her position, arguments and contentions. Decisions of the Licensing Appeal Board shall be made and sent to the aggrieved party not later than 48 hours after the hearing.

852.15 EXPIRATION OF LICENSE.

All annual licenses issued under the provisions of this chapter shall expire on December 31 in the year when issued..

852.16. INCOME TAX.

It shall be the duty of the Person licensed under this Chapter to comply with the applicable provisions of the Vandalia Income Tax Ordinance and regulations, including but not limited to the reporting and payment of any income tax due. A copy of all Licenses issued under this chapter shall be provided to the City Tax Department.

852.17 UNLAWFUL ENTRY.

It shall be unlawful for any Peddler, Solicitor, Canvasser, or other person, whether licensed or unlicensed, to enter upon any residential premises in the City where the owner, occupant, or person legally in charge of the premises has posted, at the entry to the premises, or at the entry to the principal building on the premises, a sign bearing the words "No Solicitors" or words of similar import.

852.18 SEVERABILITY.

This chapter and each section and provision of this chapter, are hereby declared to be independent sections and subsections and, notwithstanding any other evidence of legislative intent, the Council of the City of Vandalia, by adoption of the legislation containing this section, hereby states that it is the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance, is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently if such section or provision were so known to be invalid. The adoption of this chapter in a single legislative act is merely for convenience. It is the intent that each and every separate part hereof be severable so as to leave in effect as much of this chapter as is not found invalid so as to provide as much benefit to its citizens as possible while still protecting the rights guaranteed under the First Amendment of the Constitution.

852.19 PROVISIONS FOR MOBILE FOOD VENDORS.

(a) Except as specifically permitted as part of a festival or carnival pursuant to Chapter 854 of the Vandalia Zoning Code, or when part of a City sponsored and

approved event, or pursuant to a Temporary Sales permit issued under section 1276.30 of the Vandalia Code, no Mobile Food Vendor shall:

- (1) Operate in the following locations;
 - (i) One Hundred (100) feet from the front door of any restaurant and/or outdoor dining area;
 - (ii) Fifty (50) feet from any permitted mobile food vendor location;
 - (iii) Fifteen (15) feet from any fire hydrant;
 - (iv) Five (5) feet away from any driveway, sidewalk, utility box or vault, handicapped ramp, building entrance or exit or emergency call box; or
 - (v) Within Six Hundred (600) feet of any public or private school until 3:30 p.m. on days when schools are in session.
 - (vi) Public parks
- (2) Have free standing signage;
- (3) Park in a permitted location after hours of operation;
- (4) Operate between the hours of 10pm and 8 am;
- (5) Solicit or conduct business with person in motor vehicles;
- (6) Have outdoor seating;
- (7) Sell any non-food/beverage items.

(b) Mobile Food Vendors shall be permitted only in the following zoning districts: PF, OR, DB, GB, NB, HB, OS, O, O/IP, unless permitted as part of a festival or carnival pursuant to Chapter 854 of the Vandalia Zoning Code, or when part of a City sponsored and approved event. Provided, however, Ice Cream Trucks shall be permitted in any zoning district;

(c) No Mobile Food Vendor shall operate on property without the written consent of the owner or operator of the property.

(d) No Mobil Food Vendor shall conduct business for more than thirty minutes at the same property for more than five (5) consecutive days, nor more than 20 days total in a calendar year

(e) Mobile Food Vendor conducting business at a particular property where Mobile Food Vendors are permitted, for periods of thirty minutes or less, shall cause to be filed with the City an affidavit from the owner or operator of such property where the Mobile Food Vendor intends to conduct business pursuant to this section stating that the Mobile Food Vendor has permission to conduct business there.

(f) Mobile Food Vendor shall remove any trash or waste generate for its use. City trash receptacles may not be used to dispose trash or waste. All areas within 5 feet of the food vehicle must be kept clean.

(g) No Mobile Food Vendor shall refuse an order of the chief of police or his designee to cease the operation if determined to be a public safety hazard by the chief of police or his designee.

(h) No Mobile Food Vendor shall be permitted as a principal use on a premise

852.99 PENALTY.

Whoever violates or fails to comply with any of the provisions of this chapter is guilty of a misdemeanor of the fourth degree, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.