



SHAKER HEIGHTS

City Council Agenda Via Zoom Due to COVID-19 Public Health Emergency

Tuesday, October 20, 2020 at 12:00 pm

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[pwd=VUZNRUICUkQrTmFkZkZXYlpaSDY5UT09](https://zoom.us/j/97490431418?pwd=VUZNRUICUkQrTmFkZkZXYlpaSDY5UT09), Password: 33553400; Description: Council Work Session; or join by phone at 833-548-0282 (toll free); Webinar ID: 974 9043 1418; Password: 33553400. **International numbers available at <https://zoom.us/u/ahwKbeuA>. The audio of the meeting will be available the following day on the City's [website](#).**

WORK SESSION

1. Discussion about Amending the City's Ordinances for Food, Game, and Ice Cream Trucks
-Law Director William Ondrey Gruber

Documents:

[1020FOODTRUCKS-COUNCIL.PDF](#)
[ICECREAMTRUCKPRESENTATION.PDF](#)

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Memorandum

To: Members of Council

From: William M. Ondrey Gruber, Director of Law

cc: David E. Weiss, Mayor
Jeri E. Chaikin, Chief Administrative Officer

Date: October 20, 2020

Re: **Legislation to Amend the City's Ordinances - Food, Games and Ice Cream Trucks Regulations**

We are proposing amendments to the City's Traffic Code and Business Regulation Code in order to:

- clarify contradictions,
- better reflect the manner in which the current regulations are actually implemented,
- make changes and add language to improve regulation of the City's right-of-way and door to door solicitation, and
- add specific regulations of food trucks, game trucks and ice cream trucks.

For the past year or so, the Administration has been reviewing the City's regulation of vehicles that sell items in the right-of-way (i.e. food trucks) and the popularity of game trucks for private parties when parked in the street, and more recently we were asked by some citizens to consider why ice cream trucks have not been coming into most parts of the City in recent years.

In order to enact ordinances dealing with these issues, it was also necessary to review and ultimately recommend changes to update the City's Traffic Code provision on sales from vehicles (Section 1111.05), and the City's Business Regulation Code section dealing with sales of goods and services in the right of way and going door to door (Chapter 545).

Section 1111.05 of the City's Traffic Code

Currently, Section 1111.05 of the City's Traffic Code regulates sales made from vehicles in the right-of way of the City. The ordinance was adopted in 1959, with some amendments being made in 1971. So this ordinance has not been reviewed or updated in many years..

Unfortunately, the language of Section 1111.05 is confusing and even has contradictory provisions; for example, in one place it prohibits any sales from a vehicle on the City's streets, but then in other sub-sections it provides detailed regulation of vehicles making sales while on the City's streets.

Section 1111.05 applies to any sales from a vehicle in the right-of-way (i.e. streets, sidewalks, driveway aprons, and tree lawns). It does NOT apply to sales from trucks on private property.

Currently, it prohibits shouting, blowing a horn, ringing bell, or making other sounds (e.g. music) while a vehicle is driving in the streets or in public places trying to attract attention for sales, allowing only a soft bell or chime to be used while a vehicle is parked. This provision seems to be a barrier for ice cream trucks coming into the City, based on our research with ice cream truck companies.

Also, Section 1111.05 prohibits selling from vehicles:

- within 1000 feet of a school or park/recreation facility;
- within 250 feet of any intersection;
- on a through street (e.g. Shaker Blvd., Van Aken Blvd., South Woodland Rd., Fairmount Blvd.);
- from the left side of vehicle;
- before 11:00 a.m. or after 5:00 p.m.;
- on Sundays or holidays;
- while stopped for more than 5 minutes; or
- on any street more than once each day.

The Section also prohibits driving at a slow rate of speed while trying to make sales if it obstructs or impedes traffic or is done in a congested area. The Section requires use of emergency flashing lights on the front and rear while stopped and limits sales on a street to once per day.

As you can tell, many of these provisions appear to be geared toward ice cream trucks. According to the companies that operate such trucks, some of these regulations make it virtually impossible for ice cream trucks to operate in the City.

We are proposing to retain some of Section 1111.05, make some changes, and make it much simpler and clear. Most of the substantive regulations of food trucks and ice cream trucks are proposed to be moved to existing Chapter 545 in the Business Regulation Code, and the newly proposed Chapter 546 in the same Code.

The reason to keep the Section at all is to allow the Police Department to issue traffic tickets to enforce the basic provisions that will be retained in the Traffic Code, which will make enforcement simpler and more efficient.

The revised Section 1111.05 will provide for the following:

- Require a License or Permit issued pursuant to Chapter 545 or 546 of the Business Regulation Code in order to sell goods or services in the right-of-way from a vehicle or cart.
- Prohibit the following, unless a street is closed curb to curb to traffic under a Special Event Permit or License (such as for a block party or Van Aken street fair):
 - No sales on street with speed limit greater than 25 MPH (this replaces the prohibition of sales on “through streets”);
 - No sales from left side of vehicle;
 - No sales on street in one place for more than 15 minutes (increased from 5 minutes);
 - No stopping in a congested area, or to obstruct or impede traffic or cause inconvenience.
- Require use of emergency flashing lights on front and rear of vehicle.
- Prohibit sales before 11:00 a.m., or after either 9:00 p.m. or sunset, whichever is earlier (replaces limit of sales after 5 p.m.).
- Prohibit sales of goods or services on any street more than twice each day (instead of only once).
- Prohibit operating vehicle or cart at such a slow rate of speed as to obstruct or impede the normal flow of traffic.
- Prohibit shouting or blowing a horn to attract attention.
- Allow ice cream trucks only to operate a bell, chime or music while moving on a street, but not when stopped, as long as the volume is set so no sound may be heard more than 500 feet from the vehicle at any time.
- Require disposal receptacles of sufficient capacity to handle the amount of litter or waste emanating from the vehicle.
- Require the vendor to clean the area where sales have been made of all litter emanating from the vehicle or customers before moving to another location.

Chapter 545 - Solicitors and Peddlers

The City has had an ordinance regulating sales and solicitation of donations both in the right-of-way and for people going door to door on private property since the enactment of Chapter 545 in 1978. The Chapter was amended in 1992 and 2005.

License Requirement

Chapter 545 has a licensing requirement that requires any *for profit business* to obtain a license before making sales or soliciting business or donations of money in the right-of-way or by going door to door on private property.

The annual license is issued by Police Dept. (with a background check at the Police Department's discretion). The Police can deny a license or revoke it if a vendor misrepresents their identity or intentions, violates Chapter 545, has been convicted of any felony, or is convicted of a misdemeanor involving force, violence, moral turpitude, or in any way connected with the act of peddling or soliciting other than a traffic offense. The fee for the license is \$40.00 per year.

Registration Requirement

There are *exceptions* to the licensing requirement that apply to persons providing goods that they made themselves or who provide services personally, and that apply to *non-profit organizations* that sell items or solicit donations by going door to door. These persons are not required to get a license, but they are required to register with the Police Department, at no charge, to alert the Police to their presence in the City.

No License or Registration Required

There is *no requirement* to get a license or to register for persons handing out fliers or advertising circulars (including for-profit or non-profit entities, or for political or religious purposes. There is also no requirement for a license or registration for persons going door to door to talk to people about anything (e.g. canvassing for political candidates or issues, or to talk to residents about a particular religion). This exemption is based on First Amendment Constitutional interpretations.

Regulations

There are time limits for going door to door to sell goods or services and for soliciting donations:

- For License holders: soliciting is prohibited before 9:00 a.m. or after 1/2 hour after sunset; and
- For Registrants: soliciting is prohibited before 9:00 a.m. or after 9:00 p.m.
- There is no time limit for persons passing out fliers or knocking on doors to talk to residents.

This discrepancy is the result of an amendment approved by Council in 2005 in response to threats of litigation by non-profit organizations that said that our previous time limit for them of 1/2 hour after sunset severely limited their ability to raise funds in the winter during evening hours when residents would most likely be at home. There are court decisions that back up their position, so Council extended the time limits, but only for non-profits.

Note that under the existing ordinance, residents can post "no soliciting" sign preventing solicitors regulated by Chapter 545. However, these signs do not prevent persons exempt from the Chapter for handing out fliers and talking to people door to door.

The Police Department enforces the licensing and registration requirements of Chapter 545, but to their knowledge it has only been applied to the licensing of door to door sales people. The Department can recall no other entity that we have approved or that has requested to make sales in the right-of-way.

Proposed Amendments to Chapter 545

The proposed amendments to Chapter 545 leave in place all of the provisions described above. The title of the Chapter is changed to: "Solicitation of Sales of Goods and Services" in order to modernize the language of the title.

1. Lemonade Stand Exemption:

The first major addition to the Chapter is to provide an explicit exemption for sales by minors in the right-of-way, such as lemonade stands. These types of sales have required registration under the current ordinance, but the law has not been enforced against such sales.

The exemption from licensing and registration would apply to persons under the age of 18 who sell goods during daylight hours on the sidewalk or tree lawn for charitable or non-commercial (personal) purposes, as long as such sales do not block the sidewalk or impede pedestrians, or create any nuisance.

2. Persons Completely Exempt from Chapter 545:

The second major amendment is to add an explicit description of what kind of activities are exempt entirely from the licensing and registration requirements. The amendment states that Chapter 545 does not apply to:

- Mobile Food or Game Vehicles subject to Chapter 546;
- Delivery services or the actual providers of goods or services who have been hired by a resident;
- Persons handing out fliers door to door; and
- Persons going door to door seeking to speak to occupants about any religious, political, or other matter that does not involve the solicitation of sales or donations.

3. Explicit Prohibition of Sales on Sidewalks, Aprons and Tree Lawns Using Stands, Carts, etc.:

The third major amendment to Chapter 545 adds an explicit prohibition that has previously been enforced through the City's general right to regulate the right-of-way. This provision prohibits erecting a stand, cart, table, box, bin or other structure for the display or sale of goods or the provision of services or for the pursuit of any occupation whatsoever, unless a permit to do so has been issued by the City for a special event.

Naturally, this does not apply to a person under the age of 18 who sells goods during daylight hours on the sidewalk or tree lawn for charitable or non-commercial (personal) purposes, such as a lemonade stand.

4. Regulation of Unsolicited Material:

In explicitly allowing the dissemination of printed material door to door (see # 2 above), which has up until now been allowed implicitly pursuant to free speech requirements, we believe it is important to limit where printed material may be left at a home. There are certain materials that from time to time have been left at homes unsolicited in various places, including being thrown at the end of a driveway from a passing vehicle. The City has received a number of complaints about such deliveries of materials.

Thus, the fourth major proposed amendment would regulate where unsolicited materials may be left in the right-of-way and on private property, as follows:

a. Right-of-way:

The amendment would state that no person shall throw or place in the right-of-way any newspaper, handbill, advertising circular, or other printed material, except that a person may do the following:

- place material in news box, book drop box, public trash or recycling bin;

- hand material to a person who freely accepts it;
- stack material neatly for distribution for up to 12 hours (e.g. newspaper dropping off newspapers for later delivery);
- temporarily place material if it is expressly authorized by the City.

b. Private Property:

The amendment would state that no person shall throw or place on private property if the property is apparently vacant, and may not place material on private property except as follows:

- Hand material to a person who freely accepts it;
- Place material solicited by the owner or occupant;
- Leave dense material that will not blow away in a box or bag outside if left within 5 feet of a door;
- Leave material outside in a weather-proof box or container; or
- Leave material attached securely to a door, or inside a door.

Proposed New Chapter 546

We are proposing to add a new Chapter 546 to the Business Regulation Code entitled “Mobile Food and Game Vehicles.”

1. Food Trucks:

With the increase in the number and uses of food trucks generally in the country and in our region, and in response to inquiries we receive about food trucks, we are proposing to clarify our current law, to explicitly state that food trucks are not allowed to operate in the right-of-way of the City unless they are specifically authorized through a Special Event Permit or a license issued by the City. This is not a change in the law, but only an explicit clarification.

Food trucks are allowed on private property for private uses, subject to the Zoning Code. They are also allowed pursuant to a special event permit, such as for a block party or similar event around a school. Likewise, at Van Aken food trucks are allowed in the right-of-way or on RMS property through a license agreement the City has with RMS for the Van Aken Center. Under that agreement, RMS has control over when food trucks would be allowed, or not allowed.

Food trucks are regulated to some extent by the limited provisions of the new Section 1111.05 of the Traffic Code, as explained above. The new Chapter 546 would provide the following additional regulations:

- All food trucks are subject to inspection by the Fire Dept. while operating in the City. (That does not mean the Fire Dept. is required to inspect every food truck, rather it allows spot checks by Fire and responses to complaints.)
- There is a restriction on food trucks operating within 500 feet of a Special Event, unless approved as part of said Special Event, or within 500 feet of any brick and mortar restaurant. This is to prevent them from operating on private property in competition with a City-sanctioned special event.
- A waste container for public use is required that the operator shall empty at the operator’s expense and not into any City-owned waste container.
- Signage is restricted.

2. Game Trucks:

Large Game Trucks or trailers have become a popular rental for private events. We define "Mobile game vehicle" as a vehicle used to provide games, including video games, for persons entering the vehicle, including trucks, passenger vehicles, vans, and trailers, whether the vehicle is self-propelling or must be pulled by another vehicle. The inclusion of game trucks in the new Chapter 546 is solely for the purpose of ensuring that they do not create a hazard or inconvenience for residents and traffic. No licensing or registration is required in the proposed ordinance.

A mobile game vehicle would be allowed to operate in the right-of-way without being part of a Special Event or having a Special Event Permit or special License, but only for or as part of a *private event*, while such event is taking place, and only while parked on the street frontage immediately adjacent to the property where the private event is being held.

A mobile game vehicle may not be open to the public while parked on a public street, or otherwise in the public right-of-way, unless as part of a Special Event. A mobile game vehicle may only operate while parked on a public street if it is parked in full compliance with all parking laws of the City. No mobile game vehicle may operate on City-owned property unless authorized by a Special Event Permit or special License issued by the City.

3. Ice Cream Trucks:

Ice cream trucks are, obviously, a subset of food truck. Due to popular demand, we are proposing to reduce the number and severity of regulations that currently limit the ability of ice cream trucks to operate in the City, and to explicitly allow them to operate as an exception to the food truck restriction described above.

We have reached out to several ice cream vendors and companies that operate a number of the trucks. They have told us that they avoid communities where the restrictions are too onerous, the fees are too high, the use of music or jingles while driving is prohibited, and/or where it takes too long to get a permit or license. We believe the propose regulations are protective of the City and its citizens while not being too onerous for operators to be interested in coming into the City.

Some changes affecting ice cream trucks are set forth in the Traffic Code at Section 1111.05, as explained above.

In new Chapter 546, the following additional regulations would apply to ice cream trucks:

- Ice cream trucks would have to obtain an annual license issued by the Police Department.
- The Police Dept. can deny (or revoke) a license if the operator has willfully misrepresented their identity or intention, has violated any provision of the Chapter or of Section 1111.05 of the Traffic Code, or has been convicted of any felony or any misdemeanor involving force, violence, moral turpitude, any sex crime law, or driving while under the influence of drugs or alcohol or operating a vehicle while intoxicated.
- The operator of a Mobile Ice Cream Truck must maintain a valid Mobile Food License issued by the Cuyahoga County Board of Health or another authorized Health Department and display it.
- The operator must have insurance.
- The operator must display their City Mobile Ice Cream Vendor License.
- They must have certain equipment:
 - A sign saying “Slow” or similar as approved by the Police Department that is attached to the left side of the truck and can be extended out from the side of the truck while it is parked for sales.
 - A convex mirror mounted on the front so that driver in the driver's normal seating position can see the area in front of the truck obscured by the hood; and
 - A device capable of emitting a sound audible under normal conditions from a distance of not less than 200 feet when the vehicle is backing up.

Pursuant to Section 1111.05 of the Traffic Code (below), ice cream trucks would be allowed to operate a bell, chime or music while moving on a street, except that the volume must be set so that no such sound may be heard more than 500 feet from the vehicle at any time.

Recommendation

The Safety and Public Works Committee voted unanimously on March 6, 2020 to recommend that Council approve the proposed amendments to the Codified Ordinances discussed above.

It is requested that Council adopt the proposed changes to the City’s Traffic and Business Regulation Code as described in this memorandum.



Ice Cream Trucks Regulations

October 20, 2020



Sales from Vehicles are Regulated in the Traffic Code

Current City Law: Section 1111.05 Peddling From Vehicles



- **Ordinance adopted in 1959, some amendments in 1971**
- **Has contradictory provisions – prohibits sales on streets, but regulates sales on streets**
- **Applies to any sales from a vehicle in the right-of-way (streets, sidewalks, aprons, tree lawns)**
- **Prohibits shouting, blowing horn, ringing bell, or other sound while driving in streets or in public places**
- **Allows only a soft bell or chime while parked**

CURRENT CITY LAW:

Section 1111.05 Peddling From Vehicles



- **Prohibits selling from vehicles:**
 - **within 1000 ft. of school or park/recreation**
 - **within 250 ft. of intersection**
 - **on through street (e.g. Shaker, Van Aken, South Woodland, Fairmount, etc.)**
 - **from left side of vehicle**
 - **before 11 a.m. or after 5 p.m.**
 - **on Sundays or holidays**
 - **for more than 5 minutes**
- **prohibits slow rate of speed that obstructs traffic or in a congested area**
- **requires use of emergency flashing lights on front and rear while stopped**
- **limits sales on a street to 1x per day**

Simplify Section 1111.05 Traffic Code Amendments to Regulations for Sales in Right-of-Way:

Requires License or Permit:

- **Prohibits sale of goods or services on a street, sidewalk, driveway apron, or tree lawn from a vehicle or cart without having obtained...**
 - **a license issued under Chapter 545 or 546 of the Business Regulation Code, or**
 - **pursuant to a Special Event Permit or License Agreement with the City.**
 - **The sale of goods includes: food, ice cream and beverages, and non-food items.**



Simplify Section 1111.05 Traffic Code

Amendments to Regulations for Sales in Right-of-Way



- **Unless street closed curb to curb to traffic under Special Event Permit or License (e.g. block party).....**
 - **no sales on street with speed limit greater than 25 MPH (instead of “through” street)**
 - **no sales from left side of vehicle**
 - **no sales in one place more than 15 min. (instead of 5 min)**
 - **no stopping in congested area, or to obstruct or impede traffic or cause inconvenience**
 - **must use emergency flashing lights front and rear**

Section 1111.05 Traffic Code

Amendments to Regulations for Sales in Right-of-Way (cont.)

- **Allows sales any day (instead of prohibiting on Sundays and holidays)**
- **No sales before 11 a.m., or after either 9 p.m. or sunset, whichever is earlier (instead of ending by 5 p.m.)**
- **Prohibit sales on a street more than 2x each day (instead of only 1x)**
- **Prohibit operation at slow rate of speed that obstructs/impedes traffic**
- **No person shall shout or blow a horn to attract attention**
- **Ice cream truck may use bell, chime or music while moving, none while stopped (rather than only when stopped under current law)**
 - **volume set so no sound heard more than 500 ft. from vehicle**
- **Vehicle must have waste receptacles of sufficient capacity**
- **Vendor must clean area where sales made before moving on**

PROPOSED AMENDED CITY LAW:

New Chapter 546 - Mobile Food and Game Vehicles

- **No mobile food vehicle on City property or right-of-way except as part of Special Event Permit or License**
- **Ice cream trucks allowed; must have license**
- **Mobile game vehicle may operate in right-of-way**
 - **only for private event**
 - **may park on street immediately adjacent to where private event is being held**
 - **may not be open to the public while parked on street**



- [https://www.gametruckparty.com/?utm_term=game%20truck&utm_campaign=GameTruck+HQ+\(Audience+Targeting\)&utm_source=adwords&utm_medium=ppc&hsa_acc=8261103563&hsa_cam=7847639182&hsa_grp=80571965694&hsa_ad=393738309757&hsa_src=s&hsa_tgt=kwd-150119582&hsa_kw=game%20truck&hsa_mt=p&hsa_net=adwords&hsa_ver=3&gclid=CjwKCAiA44LzBRB-EiwA-JjipMi67SFSPry76bggkb77JQoS8SFKGKvJVPxhij9ofAPNIevn0J_AUBoCqTQQAvD_BwE](https://www.gametruckparty.com/?utm_term=game%20truck&utm_campaign=GameTruck+HQ+(Audience+Targeting)&utm_source=adwords&utm_medium=ppc&hsa_acc=8261103563&hsa_cam=7847639182&hsa_grp=80571965694&hsa_ad=393738309757&hsa_src=s&hsa_tgt=kwd-150119582&hsa_kw=game%20truck&hsa_mt=p&hsa_net=adwords&hsa_ver=3&gclid=CjwKCAiA44LzBRB-EiwA-JjipMi67SFSPry76bggkb77JQoS8SFKGKvJVPxhij9ofAPNIevn0J_AUBoCqTQQAvD_BwE)

PROPOSED AMENDED CITY LAW:

New Chapter 546 - Mobile Food and Game Vehicles

➤ Mobile Ice Cream Truck

- must get license from Police Dept.**
- fee for License \$40 per year**
- require background check**
- may not be felon, or convicted of misdemeanor involving force, violence, moral turpitude, sex crime, or DUI/OVI**
- must maintain valid Mobile Food License**
- must carry insurance**



PROPOSED AMENDED CITY LAW:

New Chapter 546 - Mobile Food and Game Vehicles

Mobile Ice Cream Truck

➤ **Must have the following equipment in good working order:**



- (1) sign saying “Slow” attached to left side of truck which is extended from side while parked for sales**
- (2) convex mirror on front so driver can see area in front of truck obscured by the hood.**
- (3) device emitting sound when vehicle is backing up**



QUESTIONS?

