

CITY OF DELANO
COUNTY OF WRIGHT
STATE OF MINNESOTA

ORDINANCE NO. O-16-10

An Ordinance amending City of Delano City Code Chapter 4 (Public Protection and General Licensing), Section 408.01 (Peddlers, Transient Merchants, Solicitors and Mobile Food Units).

THE CITY COUNCIL OF THE CITY OF DELANO, MINNESOTA, ORDAINS:

1. City Code Section 408.01 is deleted in its entirety and replaced with the following:

Subd. 1 Purpose. This section is not intended to interfere with the legitimate business activities of peddlers, solicitors, transient merchants, and mobile food units as the same are defined herein, whether same be local or interstate. These provisions are intended only to, as nearly as possible, ferret out all illegitimate or confidence operators and to regulate and control all those who, in person, would use their unique presence on property within the City of Delano, or their unique proximity to its residents, for purposes of fraud, harassment, nuisance, theft, or other unlawful activities.

Subd. 2 Definitions. When used in this Section, the following terms have the following meanings unless the context clearly indicates otherwise:

- "Applicant" means a person who files an application with the City Administrator or the City Administrator's designee for a permit pursuant to this subchapter.
- "City Administrator" means the City Administrator appointed by the City Council and/or the City Administrator's designee.
- "Mobile Food Unit" means a food and beverage service establishment that is a vehicle mounted unit, such as:
 1. Motorized or trailer, operating no more than twenty-one (21) days annually at any one place with the approval of the regulatory authority as defined in Minnesota Rules, part 4626.0020, subpart 70; and a self-contained unit, in which food is stored, cooked, and prepared for direct sale to the consumer.
 2. Operated in conjunction with a permanent business licensed under Chapter 157 or Chapter 128A of the Minnesota State Statutes at the site of the permanent business by the same individual or company, and readily movable, without disassembling, for transport to another location; and a self-contained unit, in which food is stored, cooked, and prepared for direct sale to the consumer.
 3. Food Cart: A food and beverage service establishment that is a non-motorized vehicle self-propelled by the operator.

4. **Ice Cream Truck:** A motor vehicle utilized as the point of retail sales of pre-wrapped or prepackaged ice cream, frozen yogurt, frozen custard, flavored frozen water, or similar frozen dessert products.

C. “Non-Commercial Door-to-Door Advocate” means any person who goes door-to-door for the primary purpose of disseminating religious, political, social, or other ideological beliefs. For purposes of this Section, the term door-to-door advocate shall include door-to-door canvassing, pamphleteering intended for non-commercial purposes, and seeking donations for which no product or service is given in return.

D. “Peddler” means any person, whether a resident of the City of Delano or not, who goes from house to house, from place to place, or from street to street, conveying or transporting goods, wares or merchandise or offering or exposing the same for sale, or making sales where payment is received immediately for future delivery to purchasers.

E. “Permit Activities” refers to all activities included in the definitions of peddler, solicitor and transient merchant.

F. “Person” means any natural individual, group, organization, corporation, partnership, or similar association.

G. “Solicitor” means any person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement, 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.

H. “Transient Merchant” means any person who engages in, does, or transacts any temporary and transient business in this state, either in one locality, or in traveling from place to place in this state, selling goods, wares, and merchandise; and who, for the purpose of carrying on such business, hire, lease, occupy, or use a building, structure, vacant lot, or railroad car for the exhibition and sale of such goods, wares, and merchandise. The term “transient merchant” does not include a seller or exhibitor in a firearms collector show involving two or more sellers or exhibitors.

Subd. 3. Permit Required. It is unlawful for any peddler, solicitor, transient merchant, or mobile food unit to engage in permit activities within the City of Delano without first obtaining a permit therefor in compliance with the provisions of this Section. Each peddler, solicitor, or transient merchant engaged in permit activities, whether independently or on behalf of another, must have a separate permit.

A. **Mobile Food Units (MFUs).** Mobile food units (MFUs) are required to meet the additional following standards:

1. MFU licenses issued by the City require approval from the City Clerk. Licenses are issued on an event basis, and permit MFUs to operate at up to four locations in the community during the course of the year, not to exceed twenty-one (21) days per location.
2. MFUs must be licensed by the Minnesota Health Department and must adhere to State regulations for food trucks as provided in Food Code Chapter 4626.1860 Mobile Food Establishments; Seasonal Temporary Food Stands; Seasonal Permanent Food Stands. Evidence of the State license must be provided to the City as part of the local license application.
3. With the exception of MFUs serving special events for public, institutional, or non-profit uses, located at parks, schools, or churches sites in residential zoning districts, MFUs operations are limited to the business and industrial districts. Ice cream truck vendors may operate in all zoning districts.
4. MFUs must be located on private property, and the applicant must provide written consent from the property owner. However, MFUs may be located in a public park with approval from the City, and ice cream trucks are allowed to operate within the public right-of-way in residential districts.
5. Private properties may host MFUs for eighty-four (84) days of the calendar year, non-consecutively, and no single MFU shall operate at the site for more than twenty-one (21) days at a time.
6. MFU sites shall be kept in a neat and orderly manner, and shall adhere to the following site and operational requirements:
 - a. Trash and/or recycling collection and cleanup must be provided.
 - b. MFUs must provide independent power supply which is screened from view. Generators are permitted.
 - c. MFUs may not maintain or use outside sound amplifying equipment, televisions, or other similar visual entertainment devices, or noisemakers such as bells, horns, or whistles. Ice cream trucks traveling through a residential district may have outdoor music or noise-making devices to announce their presence.
 - d. MFUs cannot obstruct the movement of pedestrians or vehicles or pose a hazard to public safety.
 - e. MFUs shall be located on an asphalt or concrete surface. The City may waive the MFU site surfacing requirements when the license is approved for operation within a park.
 - f. MFUs may not be located within one hundred (100) feet of existing restaurants or coffee shops, as measured from the MFU to the entrance of a food service building.
 - g. MFUs must close during adverse weather conditions when shelter is not provided.
 - h. MFUs are not permitted to operate between the hours of ten o'clock (10:00) P.M. and eight o'clock (8:00) A.M.
7. Ice cream truck vendors are required to undergo a criminal background check prior to operating in the community, at the cost of the applicant.

8. If MFU sites are found to be in non-compliance with any conditions as provided in Section 408.01 of the Ordinance, the City reserves the right to revoke the MFU transient merchant license.

Subd. 4 Exemptions.

- A. The permit requirement in Subdivision 3 and the General Permit Requirements in Subdivision 7 of this Section do not apply to the following: (i) the acts of persons selling personal property at wholesale to dealers in such articles, nor the delivery of newspapers, nor to the acts of merchants or of their employees in delivering goods in the regular course of business, nor to the sale of farm or garden products by the person producing the same at the location where such products are produced, which production shall be proven by the vendor; or (ii) persons employed at a bakery, dairy, or grocery making an uninvited initiatory visit in an effort to establish regular route service for future delivery of perishables.
- B. The permit requirement in Subdivision 3 and the General Permit Requirements in Subdivision 7 of this Section do not apply to non-commercial door-to-door advocates. This exemption will not apply if the person's exercise of constitutional rights is merely incidental to a commercial activity.
- C. The permit requirement in Subdivision 3 and the General Permit Requirements in Subdivision 7 of this Section do not apply to peddlers or solicitors who are 17 years of age or younger, who are engaged in permit activities on behalf of a public school or a private school, philanthropic organization, or community organization, which private school, philanthropic organization or community organization or its parent organization is on file with the Minnesota Secretary of State as a Minnesota domestic or a foreign business organization or has filed an assumed name, where the proceeds of the sales are mainly devoted to the benefit of the children engaged in permit activities.
- D. Nothing contained in this Section prohibits any sale required by statute or by order of any court, or prevents any person conducting a bona fide auction sale pursuant to law.

Subd. 5. Application and Fee.

- A. Applicants for a permit under this Section shall file with the City Administrator a sworn application in writing on a form to be furnished by the City.
- B. At the time of filing an application for a peddler, solicitor, or transient merchant permit, a fee shall be paid to the City to cover the cost of administering the permit and investigation of the facts stated therein. The fee shall be as set forth in the City fee schedule and may be amended from time to time. No fees are required of individuals taking orders for the shipment of goods through interstate commerce.

Subd. 6 Investigation and Issuance

- A. Upon receipt of each peddler, solicitor or transient merchant application, the applicant will undergo a background check that may include, but is not limited to, a driver's license check and a criminal history and wanted persons check with the Bureau of Criminal Apprehension, for the protection of the public good.
- B. The City Administrator shall approve or deny the application in the manner prescribed in this Section within a reasonable period of time.
- C. If grounds exist under subdivision 6, D. for denying the permit the City Administrator shall deny the permit, otherwise the City Administrator shall immediately issue the permit to the applicant. In the case of a denial the City Administrator shall notify the applicant in writing that his/her application is denied, the reason for denial, and that the applicant has the right to appeal the denial as set forth below. Notice shall be delivered in person or by mail to the permanent residential address listed on the permit application, or if no residential address is listed, to the business address provided on the permit application.
- D. The following shall be grounds for denying a permit:
 - 1. Fraud, misrepresentation or incorrect statement contained in the permit application.
 - 2. The failure of an applicant to fully complete or to sign the permit application.
 - 3. The failure of an applicant to pay the required fee at the time of application.
 - 4. A conviction or adjudication within five (5) years of the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects upon the person's ability to conduct the business for which the permit is being sought in a legal manner and where the applicant has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties and responsibilities as provided in M.S. § 364.03, Subd. 3, as it may be amended from time to time. Such violations shall include, but are not limited to, burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.
 - 5. The revocation, within the past five (5) years, of any license or permit issued to an applicant for the purpose of conducting business as a peddler, solicitor, or transient merchant.
 - 6. The denial, within the last year, of any license or permit application for the purpose of conducting business as a peddler, solicitor, or transient merchant.
 - 7. The applicant has a bad business reputation, evidence of which shall include, but is not limited to, the existence of more than three (3) substantiated complaints against an applicant with the Better Business Bureau, the Office of the Minnesota Attorney General or another state's regulatory office or department (such as another state's attorney general's office), or other business or consumer rights office or agency, within the preceding twelve (12) months, or three (3) substantiated complaints filed with the City of

Delano or another city, town, or other political subdivision against an applicant within the preceding five (5) years.

8. Failure to follow all Federal, State and Local regulations, including failure to be registered, licensed or permitted if such registration, license or permit is required by any Federal, State or Local regulation.

- E. Any permit applicant aggrieved by the denial of a permit may appeal by filing with the City Administrator within ten (10) days of the date of mailing of the notice of denial, a written statement requesting a hearing before the City Council and setting forth fully the grounds for the appeal. A hearing shall be held within thirty (30) days of receipt of the request. Notice of the hearing shall be given by the City Administrator in writing, setting forth the time and place of hearing. Such notice shall be mailed, postage prepaid, to the permit applicant at his/her last known address at least five (5) days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing.

Subd. 7 GENERAL PERMIT PROVISIONS

- A. Each person engaged in permit activities must be permitted as provided herein and may not be accompanied by a person who is not permitted while engaging in such activities. No permit may be transferred between persons or businesses.
- B. Each person engaged in permit activities must carry the City-issued permit on his or her person, and must exhibit the permit at the first point of contact with each resident or potential customer.
- C. All permits shall expire on December 31 in the year the permit is issued.
- D. The permit issued by the City is the property of the City and must be returned to the City within seven (7) days of its expiration or surrendered immediately upon suspension or revocation, whichever occurs sooner.
- E. Each person engaged in permit activities must provide a sales slip, receipt, or other documentation to any person to whom they make a sale, or from whom they take an order or receive funds. The sales slip, receipt, or documentation must include the name of the person engaged in permit activities, his or her affiliated organization, the organization's address and phone number, and a description of the transaction.

Subd. 8 RESTRICTIONS

- A. No peddler, solicitor, transient merchant, non-commercial door-to-door advocate, any person acting on his or her behalf, or other person engaged in similar activities shall, while engaged in such activities:
 1. Shout, cry out, blow a horn, ring a bell, or use any sound-amplifying device upon any of the streets, alleys, parks, or other public places of the City or upon private property 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.

2. Enter in or upon the property of another or attempt to enter in or upon the property of another if a placard or sign has been posted excluding peddlers and solicitors. The printed placard or sign must state "Peddlers and Solicitors Prohibited" or other comparable statement. Such placard shall be at least 4 inches long and 4 inches wide and the printing thereon shall not be smaller than 48-point type. No person other than the person occupying such property shall remove, injure, or deface such placard or sign.
3. Enter in or upon the property of another or attempt to enter in or upon the property of another before 9:00 a.m. or after 9:00 p.m. local time year-round.
4. Obstruct the free flow of traffic, either vehicular or pedestrian in any public right of way.
5. Make false or misleading statements about the activities or products or services being sold.
6. State or imply that the City, by issuance of a permit, has endorsed his/her activities or products.
7. Operate in a manner a reasonable person would find harassing, intimidating, abusive, or threatening.
8. Operate in a manner a reasonable person would find offensive, obscene, or abusive, push open a door not opened by an occupant, place any portion of the person's body through an opened doorway without the invitation of an occupant, or physically attempt to stop an occupant from closing a door.
9. Enter onto the property of another through any side or rear yard or attempt to make contact with a person at any point other than the main point of entrance of the building or property being approached.
10. Remain on the property of another after instructed to leave.
11. Act in a manner that threatens the health, safety, or welfare of any person or the general public.
12. Conduct permit activities in any city park without prior written authorization from the City Administrator.

Subd. 9 REVOCATION OF PERMIT

- A. Permits issued under the provisions of this Section may be revoked after notice and a hearing conducted by the City Administrator, for any of the following causes: violation of

this Section; violation of federal, state, or local law, rule, or regulation relating to peddlers, solicitors, or transient merchants; or any action identified in Subdivision 6, D.

B. Notice of the hearing for revocation of a permit shall be given by the City Administrator in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the permit holder at his/her last known address at least five (5) days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing.

Subd. 10 Appeal: The decision of the City Administrator following a hearing as provided for in this Section can be appealed by petitioning the Delano City Council. The appeal must be delivered to the City Administrator in writing within ten (10) days of the date of mailing of the City Administrator's decision.

Subd. 11 Emergency: If, in the discretion of the City Administrator, imminent harm to the health or safety of the public may occur because of the actions of any person permitted under this Section, the City Administrator may immediately suspend the person's permit and in such event shall provide notice to the person of the right to a post-suspension hearing pursuant to the procedures in Subdivision 9, B.

Subd. 12 Severability: If any provision of this Section is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

Subd. 13 Penalty: A person who violates any provision of this Section shall be deemed guilty of a misdemeanor and shall be punished in accordance with the penalties established by Minnesota Statutes.

2. City Code Section 105.01 entitled "Violation a Misdemeanor or Petty Misdemeanor" is hereby adopted in its entirety, by reference, as though repeated verbatim herein.
3. This ordinance shall become effective from and after its passage and publication.

Passed by the City Council of the City of Delano this 20th day of September, 2016.



Dale Graunke, Mayor



Attest: Brian Bloch, Finance Director/Clerk