

DATE: March 10, 2021

TO: Committee of the Whole-GS

FROM: Scott Buening, Community Development Director

SUBJECT: Discussion: Amendments to Peddler, Solicitor and Food Vendor Ordinances

Background

City staff, including Police, Community/Economic Development and Administration, have been working on amendments to the Peddler and Solicitor Ordinance for some time now. Changes in staff have caused us to start and stop these efforts. As part of these changes, we wanted to split out a new section to specifically address food vendors. These have been treated as Peddlers currently, but without any clear parameters as to where and how they can be located. The marked differences in the use from solicitors or peddlers necessitated a need to address these separately. Attached are drafts of the changes to the Ordinance in three sections.

The first (Article A) addresses Peddlers. These are regulated by the Police Department for selling of goods from place to place or house to house. Food vendors would now be specifically excluded from this section and regulated separately. The City would license all Peddlers and fines would be imposed for illegal or unlicensed peddlers. Background checks would be required for these applicants. Specific conditions for these uses are at the end of the ordinance. These include: any vehicles cannot interfere with traffic, can only be made from the right side of the vehicle, cannot sell to people standing in roadway, cannot use sound amplification and cannot sell within 1,000 feet of a school while school is in session or 30 minutes before or after.

The second section (Article B) relates to Residential Soliciting. This is more for those seeking donations or orders for goods such as magazines or service sales. This would also continue to be administered by the Police Department. Solicitation does not include any activity where donations are not being sought such as opinion seeking, petition circulating and communication of ideas. These are more in line with free speech activities, though residents can still prohibit those activities from interaction on their own property. There are provisions for licensing of solicitor and time limits for activities. No one that has been convicted of a felony less than five (5) years prior can obtain a registration. Residents can obtain a “No Solicitors” sign to prevent solicitation activities.

The third section (Article C) is a new section intended to address food vendors. While we have this drafted as being administered by the Police Department, more recently these have been administered by Community and Economic Development. These would include mobile food vendors, push carts and food trucks. These would all require a license, and would have specific background checks required. There would also be specific parameters for how the vehicles can be operated including waste and sanitary requirements, and fire extinguishers if they use any heating or cooking equipment. Additionally as proposed, they would not be able to operate as an independent food truck within 200 feet of an existing brick and mortar restaurant or within 200 feet of a school. Exceptions would be made for vehicles that are related to an existing brick and mortar business and they are using the truck for additional sales purposes, for existing businesses or restaurants that “rent” a food truck for events (i.e. a craft beer brewery), operation of a food vendor after normal restaurant operating hours or by a special event permit issued by the City.

Staff is presenting these proposed regulations for discussion purposes. We will take any points or revisions desired into a revised draft and put the changes in Ordinance form for approval at a

later date. Once these have been adopted the City will be able to regulate these under the revised regulations.

Requested Action and Recommendation

Staff is requesting that COW review the proposed regulations, provide any commentary and revisions so staff can finalize these in Ordinance form for approval.

Attachments: Article A Peddlers
 Article B Residential Soliciting
 Article C Food Vendors
 Food Vendor Setback map
 Current Peddler/Solicitor Ordinance

CC: Laura Newman, City Administrator Newman
 Dan Eul, Police Chief

ARTICLE A. PEDDLERS

3-7A-1: DEFINITION: PEDDLER

When used herein the term "peddler" shall include any person, firm, or corporation, whether a resident of the City or not, traveling by foot, automobile, or any other type of conveyance, selling or offering for sale, barter or exchange of goods, wares, merchandise, other commodities of any type, or services, or otherwise, on a place to place, house to house, or street to street basis, so long as the sale or exchange, or of same is not barred by local, State or federal law, such as alcoholic beverages. The term peddler shall not include any person selling daily or weekly newspapers or to anyone making deliveries to homes pursuant to (a) regularly established route or (b) prior individualized invitation from the homeowner. The term "peddler" shall include the words "hawker" and "huckster".

The term peddler shall not include a food vendor as that term is defined in this Code. Food Vendors shall be governed under the provisions of 3-7C-1 et seq of this Code. The term "peddler" shall not include soliciting as that term is defined in section 3-7B-1 of this Code.

3-7A-2: LICENSE REQUIRED

No person shall engage in the business of peddler in the City without first having obtained a license therefor.

3-7A-3: LICENSE APPLICATION

Applications for such licenses shall be made to the Chief of Police on forms provided, and shall set forth among other things the following:

- 1) Name and main business address of applicant and length of time it has been operating.
- 2) Statement that applicant is a corporation, partnership or individual.
- 3) Name, description and permanent residence address of person(s) who will do the peddling.
- 4) Address and contact number(s) while in the area, if applicable.
- 5) Commodity or offering to be peddled as well as the method or methods to be used in conducting peddling.
- 6) Statement whether applicant has ever had a peddler's license denied, suspended or revoked by the City or any other governmental entity.
- 7) Number of persons to be employed therein.
- 8) Number of vehicles, if any, intended to be operated, and information regarding those vehicles including the make, model, year and license plate of each vehicle.

- 9) Statement that applicant agrees to properly train all employees to handle the items which they are peddling, to deal with customers in a responsible manner, acknowledge and comply to any visible signage on residential structures that prohibit peddlers from communicating with the inhabitants, and to vacate the premises when an occupant so requests.
- 10) Statement as to whether or not the applicant, the organization or those to be peddling within the City have ever been convicted of a felony under the laws of the State of Illinois or any other state or federal laws of the United States.
- 11) Statement that the applicant agrees to conduct a thorough background check on all of its potential employees, to include a review of past work experience.
- 12) A copy of the applicant's certificate of registration under the Retailers' Occupation Tax Act (35 ILCS 120/1 et seq.), if required.
- 13) Such other information as the Chief of Police may request.
- 14) The period of time during which the applicant seeks to have a license.

3-7A-3.1: INVESTIGATION AND PERMIT ISSUED

The Chief of Police shall make or cause to be made an investigation to determine the character and reputation of the applicant. No license shall be issued to any applicant who is not found to be a person of good character and reputation or to any firm, corporation, partnership or association which is not represented in the City by a person to be of good character and reputation. The Chief of Police shall issue the permit requested if he has reason to believe that:

- 1) The statements in the application are true,
- 2) The peddling will be conducted as described in the application,
- 3) Neither the applicant(s) nor organization for which the applicant(s) propose(s) to peddle have been convicted of a violation or any provision of this article or the ordinances of any other Illinois municipality regulating peddling, and
- 4) Neither the applicant(s) nor organization for which applicant(s) propose(s) to peddle nor those to be peddling have ever been convicted of a felony under the laws of the State of Illinois or any other state or federal laws of the United States; unless the Chief of Police determines that such person has been sufficiently rehabilitated to warrant the public trust after considering matters set forth in such person's application and the investigation. The burden of proof of sufficient rehabilitation shall be on the applicant;

Otherwise the license shall be denied.

A copy of the license signed by the Chief of Police as approved shall be carried by each person of the approved application. However, a separate license may be required for each separate period for which the peddling is made.

3-7A-3.2: LICENSE AND APPLICATION FEE FOR PEDDLERS

The fee for such license shall be an annual fee of three hundred dollars (\$300.00) or a weekly fee of fifty dollars (\$50.00) as well as an application fee of twenty dollars (\$20.00) per person (ID badge included, photo supplied by applicant). There is also a ten dollar (\$10.00) replacement badge fee (photo supplied by applicant).

3-7A-4: EXEMPTIONS

No license fee shall be required from any person peddling or selling the products of his farm or garden, nor from any other person from whom the Municipality is prohibited by State or Federal law from requiring the payment of a fee, nor from those dealing in milk or milk products who are licensed under another ordinance or other ordinances.

However, all persons herein exempted must register with the Chief of Police each day they engage in peddling or selling in the City.

3-7A-5: HOURS OF OPERATION

No peddling shall be permitted before the hour of nine o'clock (9:00) A.M. or after the hour of eight o'clock (8:00) P.M. within the City, and no peddling shall be conducted on Sundays. Peddlers shall not assemble on public property when peddling is not permitted.

3-7A-6: NOTICE TO REFUSE PEDDLING, SOLICITING

It is hereby declared to be the policy of the City of Batavia that the occupant or occupants of the residences in the City shall make the determination of whether peddlers shall be, or shall not be, invited to their respective residence as follows:

- 1) Every person desiring to secure the protection intended to be provided by this article shall give notice of his determination to refuse to invite peddlers to the residence by exhibiting a card, decal or sign, not less than three inches by four inches (3" x 4") in size, upon or near the main entrance, point of approach or entry to the residence, containing the following or similar words "*NO PEDDLERS OR SOLICITORS INVITED*".
- 2) The letters shall be at least one-third inch (1/3") in height; such cards shall be provided by the police department or available for printing on the City's website to persons requesting them at a cost thereof. Alternatively a person may create their own sign, at their own cost, that complies with the requirements of this Code section.
- 3) Such card, decal or sign so exhibited shall constitute sufficient notice to any peddler that he is prohibited from trespassing upon the premises.

3-7A-7: DUTY OF PEDDLERS TO LEAVE PREMISES

It shall be the duty of every peddler, upon going onto any premises in the City upon which a "residence" as herein defined is located, to first examine the notice provided for in this article, and be governed by the statement contained on the notice. If the notice states, "*NO PEDDLERS OR SOLICITORS INVITED*" or similar words, then the peddler shall immediately and peacefully depart from the premises.

Any peddler who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

3-7A-8: TERM, SUSPENSION AND REVOCATION OF LICENSE

- 1) The term of a peddler's license shall be one (1) year, commencing January 1 and expiring the following December 31, except in the case of weekly licenses, which shall be valid for the days set forth thereon.
- 2) Any license under this article may be suspended for up to thirty (30) days or revoked by the Chief of Police if he has reason to believe that the license holder, the license holder's organization or other members of the license holder's organization have violated any provisions of this article or any other provisions of any ordinance of the City, or any section of this Code, including refusing to comply with Section 3-7A-7, or any statute, rule or regulation of any other governmental agency, has committed fraud, misrepresented or knowingly included false statements within the license application, conducted the business of peddling in such a manner as to create a public nuisance, cause a breach of the peace or constitute a danger to the public health, safety, welfare or morals, the licensee or any employee of the licensee has been convicted of any felony or misdemeanor involving moral turpitude, or failure of the licensee to pay any fine or penalty owing to the City.
- 3) Any person violating any of the provisions in this article shall be deemed guilty of a petty offense. Upon conviction of such offense a person may be suspended for up to thirty (30) days and shall be fined in a amount as provided herein and each day such violation is committed or permitted to continue shall constitute a separate offense and shall be deemed punishable as such hereunder. Any person violating this section shall be deemed guilty of a petty offense and upon conviction thereof shall be fined as follows:

| | |
|---|---|
| First Violation | \$ 75.00 |
| Second Violation within 72 hours of a first violation | \$150.00 |
| Third Violation within 72 hours of a first violation, or Second violation within 60 days of a first Violation | \$300.00 |
| Fourth Violation within 72 hours of a first violation, or Third Violation within 90 days of a First Violation | \$600.00 |
| Subsequent Violations within 72 hours of the first violation | Subject to a complaint for a permanent injunction |

- 4) Any person aggrieved by said revocation or suspension shall have the right to have their revocation or suspension heard in accordance with the Administrative Review procedures as set forth in Title 1, Chapter 14 of this Code. In order to challenge the revocation or suspension, the aggrieved party shall send notice of their desire for Administrative Review to the City Administrator within 14 days after the revocations or suspension.

3-7A-9: UNLAWFUL PEDDLING

It shall be unlawful for any person to stand on or within any street located within the corporate limits of the City for the purpose of engaging in the business of peddling with the occupant of any vehicle.

3-7A-10: ADDITIONAL CONDITIONS

Sales by a peddler within the City shall be subject to the following additional conditions:

- 1) Vehicles must be operated in a manner as not to interfere with traffic.
- 2) The sale of products is to be made from the right curb side of the vehicle and only when legally parked.
- 3) Sale of products to any person standing on the roadway is prohibited.
- 4) The use of electronic sound amplification equipment is prohibited.
- 5) Peddling within one thousand feet (1000') of any grade school, junior high school or high school within the City is prohibited while the school is in session, thirty (30) minutes before assemblage or within thirty (30) minutes of dismissal.

ARTICLE B. RESIDENTIAL SOLICITING

3-7B-1: DEFINITIONS:

For the purpose of this article, the following words shall be construed to have the meanings ascribed to them in this section:

REGISTERED SOLICITOR: Any person who has obtained valid certificate of registration as hereinafter provided, and which certificate is in the possession of the solicitor on his or her person while engaged in soliciting.

RESIDENCE: Every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

SOLICITING: Any one or more of the following activities:

- A. Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs or services of any kind, character or description for any kind of consideration;
- B. Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or character;
- C. Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication; or
- D. Seeking to obtain gifts or contributions of money, clothing or any other valuable thing for the support or benefit of any charitable or nonprofit association, organization, corporation or project.

CHARITABLE ORGANIZATION: Any benevolent, philanthropic, patriotic, not for profit, or religious or one purporting to be such which solicits and collects fund for charitable purposes.

CHARITABLE PURPOSE: Any charitable, benevolent, philanthropic, patriotic, not for profit, or religious purpose.

CHARITABLE SOLICITATION: Any request for the donation of money, property or anything of value, or the pledge of a future donation of money, property or anything of value, or the selling or offering for sale of any property, real or personal, tangible or intangible, whether of value or not, including, but not limited to, goods, books, pamphlets, tickets, publications or subscriptions to publications or brochures upon the representation, express or implied, that the proceeds of such sale shall be used for a "charitable purpose" as such term is herein defined.

SOLICITOR: Any person engaged in "soliciting", as defined herein.

Soliciting shall not be deemed to include, and, with the exception of section 3-7B-6 and subsection 3-7B-7A of this article, this article shall not apply to activity of a noncommercial nature where no monetary purchase or donation of any valuable thing is being sought. Such activity includes, by way of example only and is not limited to, canvassing of opinions; seeking to advocate, examine or discuss a cause, idea or issue; circulating petitions and other such activity involving strictly communication or dissemination of ideas of information.

3-7B-2: CERTIFICATE OF REGISTRATION REQUIRED:

- A. It shall be unlawful for any person to engage in commercial soliciting within the corporate limits of the City unless such person shall have first obtained approved registration from the City as hereinafter provided.
1. Application for a certificate of registration shall be made upon a form provided by the City. The applicant shall truthfully state in full the following information and submit the following documentation:
 - a) The name and address of the person who intends to engage in solicitation.
 - b) The name and address of the person or organization by whom the applicant is employed or represents, and the length of time such employment or representation.
 - c) The name and address of the person in charge of solicitation in the City and an address within the State of Illinois where service of process may be had.
 - d) Applicant shall submit his or her driver's license or state ID number and date of birth, as well as a physical description of applicant.
 - e) The dates and time of day such solicitation is to be made and the geographic area within the City wherein such solicitation shall be conducted at a particular time and day.
 - f) The date, or approximate date, of the latest previous application for registration under this article, if any.
 - g) Whether a registration issued to the applicant under this ordinance has ever been revoked.
 - h) Whether the applicant has been convicted of a violation of any of the provisions of this article or the ordinances of any other Illinois municipality registration regulating solicitation.
 - i) A description sufficient for identification of the subject matter of the solicitation which the applicant will engage in.
 - j) Whether the applicant has been convicted of the commission of a felony under the laws of the State of Illinois or any other state, or of a law of the United States.
 - k) An electronic or photographic headshot photo of each applicant in an approved format.
 - l) Proof of submission for Uniform Conviction Information Act through a fingerprint conviction information request with an approved Livescan Vendor with the Illinois State Police.
 2. The failure of an applicant to fulfill the requirements of this article shall be a basis for the denial of an approved registration by the Chief of Police.
 3. No certificate of registration shall be issued to any person who has been convicted of the commission of a felony under the laws of the State of Illinois or any other state or federal law of the United States, within five (5) years of the date of the application; nor to any person who has been convicted of a violation of any of the provisions of this article, nor to any person whose certificate of registration issued hereunder has previously been revoked as herein provided. In the event that any registration is denied for failure to comply with the requirements set forth hereinabove, the Chief of Police shall immediately notify the applicant, in writing, of the reasons for denial. If said application is not cured within ten (10) days after the date on which the Chief of Police denies the issuance of said registration, said application shall be null and void.
- B. Charitable Solicitation Registration: It shall be unlawful for any charitable organization to engage in charitable solicitation within the corporate limits of the City unless such organization has registered with the City as hereinafter provided.

Any charitable organization engaging in charitable solicitation within the corporate limits of the City shall register the following information with the Chief of Police or his designee:

1. The name and address of the charitable organization and the name or names under which it intends to engage in solicitation.
2. The names and addresses of all persons who will engage in charitable solicitation in the City.
3. The dates and times of day such solicitations are to be made and the geographic areas within the City wherein such solicitation shall be conducted at a particular time and day.
4. A written statement of recent date issued by the Attorney General of the State of Illinois that the charitable organization has complied with the provisions of 225 Illinois Compiled Statutes 460/1 et seq., or a written statement by the Attorney General of exemption under 225 Illinois Compiled Statutes 460/3.

3-7B-4: ISSUANCE AND REVOCATION OF CERTIFICATE:

- A. Application for a certificate of registration shall be submitted to the Chief of Police and shall be verified under oath. The Chief of Police shall act upon such application within ten (10) working days after its receipt. No application shall be effective until acted upon by the Chief of Police. If the Chief of Police finds and determines that all the requirements of this article have been met, the Chief of Police shall issue said approval forthwith. Registration shall be valid for 120 days from the date of issue.
- B. The certificate of registration issued hereunder shall be revoked by the Chief of Police if the holder of the certificate is convicted of a violation of any of the provisions of this article, or has made a false material statement in the application, or otherwise becomes disqualified for the issuance of a certificate of registration under the terms of this article. Immediately upon such revocation, written notice thereof shall be given by the Chief of Police to the holder of the approved registration by personal service or certified or registered mail, return receipt requested. Upon receipt of said notice of revocation, the certificate of registration shall become null and void and all solicitation activity shall cease.
- C. The certificate of registration shall state the expiration date thereof and the certificate of registration shall be turned in to the police department on or before the expiration date.

3-7B-5: STATEMENT OF CITY POLICY:

It is declared to be the policy of the governing body of this city that the occupants of the residences in this city shall make the determination of whether solicitors shall be or shall not be invited to their respective residences.

3-7B-6: NOTICE REGULATING SOLICITING:

Every person desiring to secure the protection intended to be provided by the regulations pertaining to soliciting contained in this article shall comply with the following directions:

- A. Notice Posted: Notice of the determination by the occupant of giving invitation to solicitors, or the refusal of invitation to solicitors, to any residence, shall be given in the following manner: a weatherproof card, approximately three inches by four inches (3"x4") in size or larger, shall be exhibited upon or near the main

entrance door to the residence, indicating the determination by the occupant, containing the applicable or similar words, as follows:

NO SOLICITORS INVITED

- B. The letters shall be at least one-third of an inch (1/3") in height. For the purpose of uniformity, the Chief of Police shall provide the cards to persons requesting, at no cost, or the resident may utilize his or her own card if so desired.
- C. Such card so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence of the information contained thereof.

3-7B-7: DUTY OF SOLICITORS:

The provisions of this section shall apply to every "solicitor", as defined in subsection 3-7B-1A of this article, and to any other individual purporting to engage in any noncommercial activity, as described in subsection 3-7B-1D of this article.

- A. It shall be the duty of every solicitor, upon going onto any premises in the city upon which a residence is located, to first examine the notice provided for in subsection 3-7B-6 of this article, and be governed by the statement contained in the notice. If the notice states, "NO SOLICITORS INVITED", or such similar words, then the solicitor shall immediately and peacefully depart from the premises. Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

3-7B-8: UNINVITED SOLICITING PROHIBITED:

Unlawful: It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring the doorbell upon or near any door, or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof to engage in soliciting in defiance of the notice exhibited at the residence in accordance with the provisions of subsection 3-7B-6 of this article.

3-7B-9: TIME LIMIT ON SOLICITING:

- A. No person shall engage in "solicitation" as herein defined prior to nine o'clock (9:00) A.M. or after seven o'clock (7:00) P.M. of any day.
- B. No commercial solicitor shall solicit within five hundred feet (500') of the property line of any elementary or secondary school.

3-7B-10: PROHIBITIONS:

- A. Felons and Persons Convicted of Sex Offenses as Solicitors: It shall be unlawful for any person to be a solicitor who has been convicted of a felony under the laws of the state of Illinois, or any equivalent law of any other state, or under the federal laws of the United States, within five (5) years of the date of application. It shall be unlawful for any person to be a solicitor who has been convicted of a sex offense as defined by 720 Illinois Compiled Statutes, Act 5, Article 11, or any equivalent law of any other state.
- B. Fraud: No person shall misrepresent his name, occupation; financial condition, social conditions or residence, and no person shall make or perpetrate any other misstatement, deception or fraud, in connection with any charitable or commercial solicitation, or in any application or report filed under this article.

3-7B-11: ADDITIONAL REGULATIONS FOR CHARITABLE SOLICITATION:

- A. Financial Disclosure: The charitable organization shall file an application with the Chief of Police and provide a financial statement of said charitable organization for the proceeding twelve (12) months, which shall include a balance sheet and statement of income and expenses clearly setting forth the following: gross receipts and gross income from all sources broken down into total receipts and income from each separate solicitation project or source, cost of administration; cost of solicitation; cost of programs designed to inform or educate the public; funds or properties transferred out of the state of Illinois, with explanation as to the recipient and purpose; total net income amount for each major purpose, charitable or otherwise. Statements shall be signed by the president or other authorized officer and shall be accompanied by an opinion signed by an independent certified public accountant that said financial statement fairly represents the financial operation of the charitable organization.

A copy of the annual report to the attorney general of Illinois required by 225 Illinois Compiled Statutes 460/4, as amended, may be presented in lieu of the aforementioned financial statement. For the purpose of financial statements, the definitions and standards applicable to the annual report to the attorney general as set forth in paragraph 460/4 shall be utilized.

In the event a charitable organization has not been established for a period of twelve (12) months, a copy of the registration statement filed with the attorney general of Illinois pursuant to 225 Illinois Compiled Statutes 460/2, as amended, may be utilized.

- B. Solicitation of charitable contributions on the public roadways and sidewalks within the corporate city limits of the City of Batavia is prohibited. However, pursuant to 65 ILCS 5/11-80-9 a charitable organization may solicit on public roadways from passing motorists or sidewalks, if all the following requirements are met:
 - 1. The persons to be engaged in the solicitation are law enforcement personnel, firefighters, or other persons employed to protect the public safety of the City of Batavia and are soliciting solely in an area that is within the service area of the charitable organization.
 - 2. The charitable organization files an application with the Chief of Police. The applications shall be filed not later than 10 business days before the date that the solicitation is to begin and shall include all of the following:
 - a) The date or dates and times of day when the solicitation is to occur.
 - b) The location or locations where the solicitation is to occur.

- c) The manner and conditions under which the solicitation is to occur.
- d) Proof of a valid liability insurance policy in the amount of at least \$1,000,000 insuring the charity or local agency against bodily injury and property damaging arising out of or in connection with the solicitation.

The application shall be approved within five (5) business days after the filing date of the application, but may impose reasonable conditions, in writing, that are consistent with the intent of this Section and are based on articulated public safety concerns. By acting under this Section, neither the City of Batavia or any charitable organization does not waive or limit any immunity from liability provided by any other provisions of the law.

3. This Section B is intended to be reflective of existing State law allowing for certain exemptions for solicitation. If the law is changed to become more or less restrictive, it is the intention for the City to comply with the amended Statute.

C. Tag Day Fundraising Events: Tag Day events are permitted within the corporate city limits on private property such as within a shopping center, financial institutions, store fronts, etc., with the property owner's permission. Any charitable organization wishing to "tag" shall forward a letter of intent no later than 10 business days before the event to the Chief of Police. This notification should include the following:

1. The date(s) the tag day fundraising event will be held.
2. Brief description of the event.
3. Location of event. Include a copy from the property owner granting permission, if required.
4. Proof of a valid liability insurance policy in the amount of at least \$1,000,000 insuring the charity, property owner and/or city against bodily injury and property damaging arising out of or in connection with the solicitation.

3-7B-12: REGISTRATION FEE:

The fee for application and approval of registration required to engage in commercial solicitation pursuant to this article shall be fifty dollars (\$50.00) per applicant. Said fee shall be paid at the time of application and prior to the processing of said application.

3-7B-13: RECORDS KEPT:

The Chief of Police shall cause to be kept an accurate record of every application received and acted upon together with all other information and data pertaining thereto, under the provisions of this article, and a record of denial of any and all applications.

3-7B-14: VIOLATION-PENALTY:

- A. Penalty: Any person violating any of the provisions of this article shall be deemed guilty of a petty offense. Except for the offenses in this section, upon conviction of such offense a person shall be fined in an amount as provided in the table below and each day such violation is committed or permitted to continue shall constitute a separate offense and shall be deemed punishable as such hereunder. Any person violating this section shall be deemed guilty of a petty offense and upon conviction thereof shall be fined as follows:

| | |
|-----------------------|--|
| First Violation | \$ 75.00 |
| Second Violation | \$ 150.00 |
| Third Violation | \$ 300.00 |
| Fourth Violation | \$ 750.00 |
| Subsequent violations | Subject to a Complaint and possibility of being banned from soliciting in the city for a period of one (1) year. |

ARTICLE C. FOOD VENDORS

3-7C-1: DEFINITION

When used herein the term food vendor shall include any person, whether a resident of the City or not, who travels within the City, by motorized vehicle, selling for profit or offering for sale any food items, and rendering immediate delivery; or any person who trades within the City, operating a push cart, whether pushed, bicycled, or towed by a motorized vehicle, sells for profit or for sale food items and rendering immediate delivery. Food vendors do not include restaurants or food establishments selling food on their own premises.

For the purpose of this article, the following terms and phrases shall have the meanings ascribed herein, unless the context otherwise requires:

“Approved Food and Beverage Items” shall mean those items authorized to be sold or dispensed from a push cart or motorized vehicle or similar contrivance under the regulations of the Kane County Health Department.

“Person” shall mean, but not limited to, any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust estate, employees, agents, and independent contractors of the same.

“Pushcart” shall mean any cart (whether pushed, bicycled, or towed by a motorized vehicle) that is limited to precooked hot dogs, un-shucked cooked corn, whole fresh fruit, canned beverages, condiments, and prepackaged non-potentially hazardous food, or what the Kane County Health Department will allow.

“Vending Vehicle” shall mean a vehicle-mounted food service establishment designed to be driven on public streets under its own power. These include but are not limited to self-contained units and mobile food trucks.

3-7C-2: LICENSE REQUIRED

No person, corporation, partnership, sole proprietor or other business entity shall operate a food vending vehicle or push cart with the corporate limits of the City of Batavia without first having obtained a Food Vendor License. No license is required for deliveries of packaged food intended for preparation and consumption within one’s residence or places of business.

3-7C-3: LICENSE APPLICATION

Applications for such licenses shall be made to the Chief of Police on forms provided, and shall set forth among other things the following:

- 1) Name and main business address of applicant and length of time it has been operating.
- 2) Statement that applicant is a corporation, partnership or sole proprietor.
- 3) A detailed description of the operating vehicle and/or dimensions of the pushcart. Include the number of vehicles intended to be operated.
- 4) Applicant must provide a copy of an approved Kane County Health Department Certificate and/or Kane County Mobile Food Vendor license.

- 5) Applicant must provide a copy of a policy of public liability insurance issued by a solvent and responsible insurance company authorized to do business in the State of Illinois in a minimum amount of one million dollars (\$1,000,000.00) for bodily injury or death to a person and three hundred thousand dollars (\$300,000.00) for damage to property, with the City of Batavia named as an additional insured.
- 6) As a condition to the issuance of a license required herein, each food vendor shall execute an agreement by which indemnifies and holds the City, its agents, officials and employees harmless from and against any and all claims, damages and actions at law or in equity arising out or resulting from the vending activity.
- 7) Number of persons to be employed therein.
- 8) Statement that applicant agrees to properly train all employees to handle the items which they are vending or selling and to deal with customers in a responsible manner in accordance with the Kane County Health Department Food Manager or Food Handler or related license(s).
- 9) Statement as to whether or not the applicant or organization or the organization's members has ever been convicted of a felony under the laws of the State of Illinois or any other state or federal laws of the United States.
- 10) Statement that applicant agrees to allow the Batavia Police Department to conduct a thorough background check on all of its potential employees, to include a review of past work experience. No food vendor's license shall be issued to a person who is a registered sex offender as defined in the Sex Offender License Act.
- 11) Such other information as Building and Code Enforcement may request.

3-7C-3.1: INVESTIGATION AND LICENSE ISSUED

The Chief of Police shall make or cause to be made an investigation to determine the character and reputation of the applicant. No license shall be issued to any applicant who is not found to be a person of good character and reputation or to any firm, corporation, partnership or association which is not represented in the City by a person to be of good character and reputation. The Chief of Police shall issue the license requested if he has reason to believe that:

- 1) The statements in the application are true,
- 2) The food vending will be conducted as described in the application,
- 3) Neither the applicant(s) nor organization for which the applicant(s) propose(s) to vend food has been convicted of a violation or any provision of this article or the ordinances of any other Illinois municipality regulating food vending, and
- 4) Neither the applicant(s) nor organization for which applicant(s) propose(s) to vend food has ever been convicted of a felony under the laws of the State of Illinois or any other state or federal laws of the United States;

Otherwise the license shall be denied.

A copy of the license signed by the Chief of Police as approved shall be carried by each person of the approved application. However, a separate license may be required for each separate period for which the food vending is made.

3-7C-4: SPECIFICATIONS AND LIMITATIONS

- 1) The photographic identification card shall be worn on the outer clothing of all vendors at all times while vending.
- 2) Vending vehicles shall be equipped with a sign on the front or back of the vending vehicle which shall consist of reflective letters no less than three (3) inches in height and shall state:

CAUTION CHILDREN CROSSING

- 3) Vending vehicles shall be equipped with a sign on the side of the vehicle which shall consist of letters no less than three (3) inches in height and shall state the name, telephone number of the owner of the vehicle, and an identification numeral distinguishing the vehicle.
- 4) Vending vehicles and pushcarts shall have prominently displayed on the vehicle or pushcart or available for inspection on their person at all times when in operation (a) a certificate of insurance coverage meeting the specifications set forth in this article; (b) the food vendors license issued by the City; (c) an Illinois Department of Revenue Registration Certificate and (d) the license issued by the Kane County Health Department or as required by regulations of the County Health Department. Vendors shall at all times, when in operation, comply with all requirements and standards of the Kane County Health Department and it shall be the obligation of the food vendor to maintain a current and valid Kane County Health Certificate during the term of the license issued by the City.
- 5) Vending vehicles shall have sufficient lighting so that the flashing, if applicable, will be visible at a distance of five hundred (500) feet whenever the vehicle is stopped for the purpose of vending.
- 6) All pushcarts shall have a frame no greater than three (3) feet wide by five (5) feet long by five (5) feet high and have a minimum of two (2) functional rubber tired wheels with a braking mechanism.
- 7) Pushcarts may be equipped with an umbrella, in which case, the umbrella height shall not exceed eight (8) feet above adjacent grade. No pushcart shall have attached to it any bell, siren, light, balloon or other inflatable device, horn, loudspeaker or any similar device.
- 8) No pushcart shall have a permanent connection for potable water, wastewater, electric, or otherwise use an electric extension cord or generator.
- 9) Vending vehicles and pushcarts shall have two litter or trash containers available to customers of the vending vehicle in accordance with Kane County Health Department regulations.
- 10) Vending vehicles shall have a mechanical refrigeration unit, which will keep all perishable ice cream or similar frozen confections at a temperature of zero degrees (0°) to

minus ten degrees Fahrenheit (-10°). Dry ice may not come into direct contact with the ice cream or similar frozen confection. The use of ice for refrigeration is prohibited.

- 11) Vending vehicles using electric, gas, or solar power for their operation requires an approved fire extinguisher.
- 12) Vending vehicles using propane, natural gas or some other combustable gas shall have a leak detection device
- 13) Vending vehicles with deep fat fryers shall have a K type extinguisher of sufficient size in relation to the size of the deep fat fryer.
- 14) Vending vehicles shall have appropriate fire extinguishers or fire suppression system based on their operation.

3-7C-5: RULES OF OPERATION

In addition to any other condition or regulation contained in the City Code or in the statutes of the state, the following conditions and regulations shall be applicable to and shall govern and control the operations of Food Vendors:

- 1) Vending vehicles and pushcarts shall not be operated within 200 feet of a brick and mortar restaurant, within 200 feet of any brick and mortar store selling packaged food items, or within 200 feet of any public school property except as follows:
 - A) Food Vendors may operate under a separate Late Hour License issued by the City. This License allows Food Vendors to operate within 200 feet of existing restaurants or food establishments between the hours of 10:00 PM and 2:00 AM the following day, provided that existing facilities are closed for food sales.
 - B) Food Vendors may operate in conjunction with an existing restaurant or food establishment as a “sponsored vendor”. Food Vendors so sponsored shall operate within the boundaries of the sponsor’s property, or within the area of the Sponsor’s Outdoor Seating License Area. Sponsor shall not be permitted to allow a Food Vendor to use their property or Outdoor Seating License area if a written objection is received from any other restaurant or food establishment located within 200 feet of the Food Vendor location.
 - C) Food Vendors may operate within 200 feet of existing restaurants or food establishment pursuant to a special event permit issued by the City.
- 2) Vending vehicles and pushcarts shall operate only between the hours of 6:30 a.m. and 10:00 p.m. The hours of operation shall be extended to 11:00 p.m. during special events and festivals as may be established by City Code or as determined by the City Administrator.
- 3) Vending vehicles and pushcarts shall not be stored, parked or left overnight on any street or sidewalk or in any parking space or other property owned or controlled by the City or be located so as to be visible to the public.
- 4) Vending vehicles and pushcarts shall be cleaned daily and shall be maintained in a clean and healthful condition.

- 5) Vending vehicles and pushcarts shall not impede, endanger or interfere with pedestrian or vehicular traffic.
- 6) Vending vehicles shall not occupy any off street public parking space.
- 7) Pushcarts shall maintain a minimum clearance of no less than five (5) feet around the pushcart for the passage of pedestrians. The immediate area around the pushcart shall be maintained clean of garbage, trash, paper, cups, cans or litter associated with the pushcart operation.
- 8) Vending vehicles and pushcart food vendors shall be responsible for the proper disposal of waste and trash associated with its operation. Placement of containers for the collection of waste and trash is prohibited on streets, sidewalks or public places.
- 9) The following shall not be performed from a vending vehicle:
 - a. Vending from the left, or driver's side, of the vehicle.
 - b. Vending from the vending vehicle directly to another vehicle.
 - c. The emission of amplified music intended to advertise the presence of the vehicle. Amplified mechanized bells or chimes are permitted only while the vending vehicle is in motion.
 - d. Vending if the vehicle is not parked with the right side thereof to the curb or right side of the roadway.
 - e. Vending in a "no parking" area.
 - f. Vending within a distance of one hundred feet (100') from the nearest intersecting roadway.
 - g. Conducting food vending within a City park unless permitted by the Batavia Park District.
- 10) Vending vehicles and pushcarts shall be attended at all times except in case of an emergency.
- 11) No items of any kind, other than Approved Food and Beverage Items as defined by the Kane County Health Department, shall be sold or displayed from a vending vehicle or pushcart.
- 12) The operation of a vending vehicle or pushcart shall not deface, discolor, mar, mark, damage or destroy the public right-of-way. All stains from cooking, wheels, spillage or any other cause shall be removed within forty-eight (48) hours.
- 13) It shall be unlawful for any person(s) who is afflicted with, or is the carrier of any infectious or contagious disease of being transmitted by contact with food products to conduct food vending.
- 14) In the event of a conflict between the requirements of this article and the requirements and regulations of the Kane County Health Department or any other law, rule or regulation applicable hereto, the stricter requirement shall control.

3-7C-6: LICENSE AND APPLICATION FEE FOR FOOD VENDORS

The fee for such license shall be the same as those in 3-7A-3.2 regarding Peddlers.

3-7C-7: EXEMPTIONS

No license fee shall be required from any person peddling or selling the products of his farm or garden, nor from any other person from whom the Municipality is prohibited by State or Federal law from requiring the payment of a fee, nor from those dealing in milk or milk products who are licensed under another ordinance or other ordinances.

However, all persons herein exempt must notify the police department for each day they engage in food vending in the City.

3-7C-8: TERM, SUSPENSION AND REVOCATION OF LICENSE

The term, suspension and revocation of a License shall be the same as those stated in 3-7A-8.

3-7C-9: UNLAWFUL FOOD VENDING

It shall be unlawful for any person to stand on or within any street located within the corporate limits of the City for the purpose of engaging in the business of food vending with the occupant of any vehicle.

CHAPTER 7

PEDDLERS AND SOLICITORS

ARTICLE A. PEDDLERS AND HAWKERS

SECTION:

3-7A-1: Definition

3-7A-2: License Required

3-7A-3: License Application And Fee

3-7A-4: Exemptions

3-7A-5: Prohibited Acts

3-7A-6: Penalty

3-7A-1: DEFINITION:

For the purpose of this Article, the term "hawkers" or "peddlers" shall be defined as those persons who are engaged in going through the City, from house to house selling merchandise along a City street or otherwise, carrying their merchandise, wares or articles for sale and selling them to customers without previously having taken orders therefor, whether their customers be regular customers or otherwise. (1972 Code § 116.100; amd. Ord. 87-31, 6-15-1987)

3-7A-2: LICENSE REQUIRED:

It shall be unlawful for any person to engage in the business of hawker or peddler of any merchandise, article or thing within the City without first having obtained a license therefor as hereinafter provided. (1972 Code § 116.105)

3-7A-3: LICENSE APPLICATION AND FEE:

Applications for such licenses shall be made to the Chief of Police, and shall state thereon the number of vehicles, if any, intended to be operated, the kind of article or merchandise to be peddled, and the permanent address of the peddler. The fee for such license shall be: for peddlers using a cart, wagon, automobile, truck or other vehicle, one hundred dollars (\$100.00) per year or fraction thereof for each vehicle used by such peddler; for peddlers not using any vehicle in selling his wares, the fee shall be the same as though he used one vehicle therefor. Application for said licenses and the qualifications for applicants shall be as provided in Sections 3-7B-2, 3-7B-3 and 3-7B-4. (1972 Code §§ 116.110, 116.115; amd. 1986 Code; Ord. 87-31, 6-15-1987)

3-7A-4: EXEMPTIONS:

No license fee shall be required from any person peddling or selling the products of his farm or garden, nor from any other person from whom the Municipality is prohibited by State or Federal law from requiring the payment of a fee, nor from those dealing in milk or milk products who are licensed under another ordinance, or other ordinances. (1972 Code § 116.120; amd. 1986 Code)

3-7A-5: PROHIBITED ACTS:

Any licensed peddler or hawker who shall be found guilty of any fraud, cheating or misrepresentation, whether through himself or through an employee, while acting as a peddler in the City, or who shall barter, sell or peddle goods, wares or merchandise other than that specified in his application for a

license shall be fined not more than five hundred dollars (\$500.00) for each offense; and the Mayor may revoke his license for such offense. (1972 Code § 116.999; amd. 1986 Code)

3-7A-6: PENALTY:

Any person found guilty of violating any provision of this Article shall be fined not more than five hundred dollars (\$500.00) for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. (1972 Code § 116.999; amd. 1986 Code)



ARTICLE B. RESIDENTIAL SOLICITING

SECTION:

3-7B-1: Definitions

3-7B-2: Certificate Of Registration Required

3-7B-3: Application For Certificate

3-7B-4: Issuance And Revocation Of Certificate

3-7B-5: City Policy On Soliciting

3-7B-6: Notice Regulating Soliciting

3-7B-7: Soliciting Restrictions

3-7B-8: Exemptions

3-7B-9: Penalty

3-7B-1: DEFINITIONS:

A. For the purpose of this article, the following words as used herein shall be construed to have the meanings herein ascribed thereto:

REGISTERED SOLICITOR: Any person who has obtained a valid certificate of registration as hereinafter provided, and which certificate is in the possession of the solicitor on his or her person while engaged in soliciting.

RESIDENCE: Every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

SOLICITING: Any one or more of the following activities:

A. Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, insurance, magazine or book subscriptions, or services of any kind, for any kind of consideration whatever;

B. Seeking to obtain gifts or contributions of money, clothing or any other valuable thing for the support or benefit of any charitable or nonprofit association, organization, corporation or project.

SOLICITOR: Any person engaged in "soliciting", as defined herein.

B. Soliciting shall not be deemed to include, and, with the exception of section 3-7B-6 and subsection 3-7B-7A of this article, this article shall not apply to activity of a noncommercial nature where no monetary purchase or donation of any valuable thing is being sought. Such activity includes, by way of example only and is not limited to, canvassing of opinions; seeking to advocate, examine or discuss a cause, idea or issue; circulating petitions and other such activity involving strictly communication or dissemination of ideas or information. (Ord. 02-62, 10-7-2002)

3-7B-2: CERTIFICATE OF REGISTRATION REQUIRED:

Every person desiring to engage in "soliciting", as herein defined, from persons in residences within the municipality is required to make written application for a certificate of registration as hereinafter provided. (Ord. 02-62, 10-7-2002)

3-7B-3: APPLICATION FOR CERTIFICATE:

A. Application for a certificate of registration shall be made upon a form provided by the chief of police of the municipality and filed with the chief. The applicant shall truthfully state in full the information requested on the application.

B. All statements made by the applicant upon the application or in connection therewith shall be under oath.

C. The chief of police shall require every applicant to submit to fingerprinting by the police department of the municipality in connection with the application for a certificate.

D. The chief of police shall cause to be kept in his office an accurate record of every application received and acted upon together with all other information and data pertaining thereto and all certificates of registration issued under the provisions of this article, and of the denial of applications. Applications for certificates shall be numbered in consecutive order as filed, and every certificate issued, and any renewal thereof, shall be identified with the duplicate number of the application upon which it was issued.

E. No certificate of registration shall be issued to any person who has been convicted of the commission of a felony under the laws of the state of Illinois or any other state or federal law of the United States, within five (5) years of the date of the application; nor to any person who has been convicted of a violation of any of the provisions of this article, nor to any person whose certificate of registration issued hereunder has previously been revoked as herein provided. (Ord. 02-62, 10-7-2002)

3-7B-4: ISSUANCE AND REVOCATION OF CERTIFICATE:

A. After consideration of the application and all information obtained relative thereto, the chief of police shall deny the application if the applicant does not possess the qualifications for such certificate of registration herein required, and that the issuance of a certificate of registration to the applicant would not be in accord with the intent and purpose of this article. Endorsement shall be made by the chief of police upon the application of the denial of the application. When the applicant is found to be fully qualified, the certificate of registration shall be forthwith issued.

B. Any certificate of registration issued hereunder shall be revoked by the chief of police if the holder of the certificate is convicted of a violation of any of the provisions of this article, or has made a false material statement in the application, or otherwise becomes disqualified for the issuance of a certificate of registration under the terms of this article. Immediately upon such revocation, written notice thereof shall be given by the chief of police to the holder of the certificate in person or by certified U.S. mail addressed to his or her residence address as set forth in the application.

C. Immediately upon the giving of such notice, the certificate of registration shall become null and void.

D. The certificate of registration shall state the expiration date thereof and the certificate shall be turned in to the police department on or before the expiration date. (Ord. 02-62, 10-7-2002)

3-7B-5: CITY POLICY ON SOLICITING:

It is declared to be the policy of the governing body of this city that the occupant or occupants of the residences in this city shall make the determination of whether solicitors shall be, or shall not be, invited to their respective residence. (Ord. 02-62, 10-7-2002)

3-7B-6: NOTICE REGULATING SOLICITING:

Every person desiring to secure the protection intended to be provided by the regulations pertaining to soliciting contained in this article, shall comply with the following directions:

A. Notice of the determination by the occupant of giving invitation to solicitors, or the refusal of invitation to solicitors, to any residence, shall be given in substantially the following manner: a weatherproof card, approximately three inches by four inches (3" x 4") in size, shall be exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant, containing the applicable words, as follows:

NO SOLICITORS INVITED

B. The letters shall be at least one-third of an inch ($\frac{1}{3}$ ") in height. For the purpose of uniformity, the chief of police shall provide the cards to persons requesting, at no cost, or the resident may utilize his or her own card if so desired.

C. Such card so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence of the information contained thereof. (Ord. 02-62, 10-7-2002)

3-7B-7: SOLICITING RESTRICTIONS:

The provisions of this section shall apply to every "solicitor", as defined in subsection 3-7B-1A of this article, and to any other individual purporting to engage in any noncommercial activity, as described in subsection 3-7B-1B of this article.

A. It shall be the duty of all persons to whom this section applies who is entering any premises in the city upon which a residence is located to first determine if there is a notice on the premises (as provided for in section 3-7B-6 of this article), and be governed by the statement contained on the notice. If the notice states, "NO SOLICITORS INVITED", then the solicitor shall immediately and peacefully depart from the premises.

Any such person who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

B. If a notice in accordance with the provisions of section 3-7B-6 of this article is exhibited at a residence located within the city, it shall be unlawful, and shall constitute a nuisance, for any person to whom this section applies to enter any premises and ring the doorbell upon or near any door, or create any sound in any other manner calculated to attract attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof.

C. It is unlawful and shall constitute a nuisance for any person to whom this section applies to enter any premises and ring the doorbell upon or near any door, or create any sound in any other such manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof, prior to nine o'clock (9:00) A.M. or after six o'clock (6:00) P.M. of any day. (Ord. 02-62, 10-7-2002)

3-7B-8: EXEMPTIONS:

A. With the exception of section 3-7B-6 and subsection 3-7B-7A of this article, the other provisions of this article shall not apply to persons authorized by the city council to solicit, as defined in subsection 3-7B-1A of this article, for religious, charitable, community service and other not for profit organizations.

B. Any religious, charitable or other not for profit organization which desires to solicit within the city shall obtain and file with the chief of the Batavia police department an application which among other items must contain the following information:

1. Name and address of the organization.
2. Name and address of the person within the organization responsible for soliciting in the city.
3. A current financial statement of the organization.
4. The use to which the solicited funds are to be directed.

5. Hours of operation of the soliciting.
6. The number of and names and addresses of the solicitors.
7. The geographic area of solicitation to be covered within the city.
8. The duration of the solicitation.
9. Approval from the attorney general of the state of Illinois as to the status of the organization as a not for profit organization.

C. The Batavia police department shall thereafter conduct an appropriate investigation and recommendation. The police department shall then refer the application and its recommendation to the judicial services committee of the city council for recommendation. The judicial services committee shall recommend approval or disapproval to the city council. The city council shall then vote on whether to add the organization to the city's approved list of solicitors.

D. The approved list of solicitors shall include the name of each organization authorized to solicit under the terms of this section. The list shall be maintained by the Batavia police department.

E. Organizations on the approved list may solicit in the city between the hours of nine o'clock (9:00) A.M. and nine o'clock (9:00) P.M.

F. Penalty, see section 3-7B-9 of this article. (Ord. 02-62, 10-7-2002)

3-7B-9: PENALTY:

Any person violating any of the provisions of this article shall, upon conviction thereof, be fined not more than seven hundred fifty dollars (\$750.00) for each offense. (Ord. 02-62, 10-7-2002)