



DATE: June 18, 2021

TO: Mayor and City Council

FROM: Scott Buening, Community Development Director

SUBJECT: Ordinance 21-31: Revising Municipal Code Regarding Peddlers, Solicitors and Food Vendors

Background

The Committee of the Whole reviewed the revised Ordinance at their meeting on June 15, 2021. The Committee requested staff to revise this Ordinance to remove duplicative language regarding health and sanitation requirements, as well as removal of language prohibiting convicted/former felons from obtaining a Food Vendor License. The revised Ordinance is attached, and staff recommends approval. Prior staff reports are below:

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The Committee of the Whole reviewed the proposed changes to the Peddlers, Solicitors and the new section relating to Food Vendors at their meeting on March 23, 2021. Since that time we have revised the Ordinance as requested by the Committee, but some additional changes have been made by the City Attorney to address some legal matters.

Specific changes that have been made include:

- Removing requirement for “Caution Children Crossing” signs on food trucks
- Eliminating requirement for background checks on Food Vendors
- Added restriction that Food Vendor vehicles cannot be used for alcoholic beverage sales
- Added a clarification that Food Vendor vehicles may be on the premises of a vending vehicle owner even if the Food Vendor is not the principal business on the premises (I.e. a Hair Salon could also operate a Food Vendor vehicle they own on their own property)

In addition, the City Attorney made some changes that relate to First Amendment issues and other minor changes for clarification purposes. These include:

- Clarifying that the Peddlers and Solicitors are licensed to the individual, and these are issued by the Police Department.
- Clarifying that the Food Vendor licenses go with the cart/vehicles and that these are issued by the Community and Economic Development Department
- Eliminated a provision in 3-7A-5 that prohibited Peddlers from assembling on public property outside peddling hours
- Clarified in 3-7B-1 what “soliciting” and “solicitor” entails in the definitions so as to eliminate first amendment issues
- Clarified in 3-7B-11 that soliciting on the streets is not permitted; allowing certain groups to solicit and not all is a first amendment violation, soliciting would be allowed on sidewalks as it is considered a “public forum” space

Staff recommends approval of the proposed amendments to the Municipal Code regarding Peddlers, Solicitors and Food Vendors as amended herein. The following is the prior staff report regarding this topic:

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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 recommends approval of Ordinance 21-31: Revising Municipal Code Regarding Peddlers, Solicitors and Food Vendors.

Attachments:

1. Ordinance 21-31: Revising Municipal Code Regarding Peddlers, Solicitors and Food Vendors

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

**CITY OF BATAVIA, ILLINOIS
ORDINANCE 21-31**

**REVISING TITLE 3, CHAPTER 7 OF THE BATAVIA MUNICIPAL CODE
REGULATING PEDDLERS, SOLICITORS AND FOOD VENDORS**

**ADOPTED BY THE
MAYOR AND CITY COUNCIL
___ DAY OF _____, 2021**

Published in pamphlet form
by authority of the Mayor
and City Council of the City of Batavia,
Kane & DuPage Counties, Illinois,
This ___ day of _____, 2021

Prepared by:
Kevin G. Drendel
City of Batavia
100 N. Island Ave.
Batavia, IL 60510

**CITY OF BATAVIA, ILLINOIS
ORDINANCE 21-31**

**REVISING TITLE 3, CHAPTER 7 OF THE BATAVIA MUNICIPAL CODE
REGULATING PEDDLERS, SOLICITORS AND FOOD VENDORS**

NOW THEREFORE, BE IT HEREBY ORDAINED by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1. Title 3, Chapter 7 of the Batavia Municipal Code is hereby revised to change the name of Chapter 7 to PEDDLERS, SOLICITORS AND FOOD VENDORS.

SECTION 2. Title 3, Chapter 7, Article A of the Batavia Municipal Code is hereby revised and replaced in its entirety as follows:

ARTICLE A. PEDDLERS

3-7A-1: DEFINITIONS

“Peddling” shall mean the sale or offer for sale, barter or exchange of any goods or services for immediate delivery or performance on a place to place, house to house, or street to street basis. The term peddling shall not include the selling of daily or weekly newspapers or the making deliveries to homes pursuant to (a) subscription, (b) phone, online or other remote order, authorization, or prior invitation from the property owner.

“Peddler” shall mean any person who engages in peddling. The term “peddler” shall include the words “hawker” and “huckster”.

The term peddler shall not include a food vendor or a solicitor as those terms are defined in Articles 3-7B and 3-7C of this Code.

“Person” shall mean, but is not limited to, any individual, partnership, firm, company, corporation, limited liability company, trust, or group or association of people, including the employees, agents, and independent contractors of the same.

3-7A-2: LICENSE REQUIRED

No person shall engage in peddling in the City without first having obtained a license therefor.

3-7A-3: LICENSE APPLICATION

Applications for licenses shall be made by the individual or by the authorized representative of the entity that desires to peddle goods or services in the City 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 engaged in peddling.
- 2) If the applicant is not an individual, a statement of the type of the individual's representative capacity with the entity for which the application is being made.
- 3) Name, description, permanent residence address, and contact numbers of person(s) who will do the peddling under the license.
- 4) Temporary address and contact number(s) while in the area, if applicable, of person(s) who will do the peddling.
- 5) Commodity or offering to be peddled as well as the method or methods to be used in conducting the peddling.
- 6) Statement whether the applicant or entity for which the applicant is applying for a license 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 by the applicant or entity for which the applicant is applying for a license to peddle goods or services in the City.
- 8) Number of vehicles, if any, intended to be operated while peddling in the City, and information regarding those vehicles including the make, model, year and license plate of each vehicle.
- 9) Statement representing and warranting that applicant has properly trained all employees to handle the items which they are peddling, and to deal with customers in a responsible manner, and will acknowledge and comply with 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 representing and warranting that neither the applicant, nor any principal of the entity for which the applicant is applying for a license nor those who will be peddling for the applicant or entity within the City have ever been convicted of a felony or misdemeanor involving moral turpitude under the laws of the State of Illinois or any other state or federal laws of the United States.
- 11) Statement representing and warranting that the applicant has conducted a thorough background check on all of its employees who will peddling in the City, including 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 and the entity for which the applicant is applying for the license. No license shall be issued to any applicant who is not found to be a person of good character

and reputation or to any entity the principals of which are not found to be person(s) 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, nor the principals of the entity for which the applicant is applying for a license, nor the persons who will be peddling pursuant to the license to peddle have been convicted of violation of any provision of this Article or the ordinances of any other Illinois municipality regulating peddling, and
- 4) Neither the applicant, nor the principals of the entity for which the applicant is applying for a license, nor the persons who will be peddling pursuant to the license to peddle have ever been convicted of a felony or misdemeanor involving moral turpitude under the laws of the State of Illinois or any other state or federal laws of the United States; provided that, if 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 Chief of Police may issue the license, with or without conditions or limitations, as the Chief of Police determines. The burden of proof of sufficient rehabilitation shall be on the applicant.

If the Chief of Police cannot make these positive determinations, the license shall be denied.

A copy of the license signed by the Chief of Police as approved shall be carried by each person who peddles in the City. 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 a peddling 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 who is required to carry a copy of license (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 a local 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.

3-7A-6: NOTICE OF PROHIBITED PEDDLING

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 to invite peddlers or prohibit peddlers at their residences. Every person who desires to prohibit peddling and to secure the protection intended to be provided by this Article to prohibit peddlers from peddling at a residence where peddling is not desired shall comply with the following directions:

- 1) Notice Posted: Notice of the determination to prohibit peddlers to the residence shall be given by exhibiting a card, decal or sign, not less than three inches by four inches (3" x 4") in size in clear view at or near the main entrance(s), point(s) of approach(es) or entry(ies) to the residence, displaying the following or similar words:

NO PEDDLERS INVITED

or

PEDDLERS PROHIBITED

- 2) The letters shall be at least one-third inch (1/3") in height. For purposes of uniformity, the City may provide cards complying with these requirements to persons requesting them at the City or available for printing on the City's website. 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 peddling at that residence is prohibited.
- 4) The City shall enforce the intentions of the occupants of each residence who have evidenced the desire to prohibit solicitation at such residence by posting notice consistent with the provisions of this Section.

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

- 1) Peddlers shall not peddle at residences that contain notices consistent with the provisions in 3-7A-6 prohibiting peddling, and the peddlers shall immediately and peacefully depart from any residence displaying such notice.
- 2) Regardless of whether any sign is posted at a residence door, a peddler shall immediately and peacefully depart from a residence when requested to do so by the occupant.

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

CITY OF BATAVIA, ILLINOIS ORDINANCE 21-31

- 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 entity to which the license is issued or the principals of the licensed entity have:
 - a) violated any provisions of this Article or any other provisions of any ordinance of the City, or any section of this Code, including a failure to comply with Section 3-7A-7, or any statute, rule or regulation of any other governmental agency,
 - b) committed fraud, misrepresented or knowingly included false statements in the license application,
 - c) 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,
 - d) been convicted of any felony or misdemeanor involving moral turpitude, or
 - e) failed to pay any fine, penalty, or other obligation owing to the City after notice and due opportunity to pay.
- 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 prohibited from peddling in the City for up to thirty (30) days for each offense and 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

Each day a violation is committed or permitted to continue shall constitute a separate, punishable offense.

- 4) A person may appeal the revocation or suspension of a license pursuant to the procedures set forth in Title 1, Chapter 14 of this Code. In order to challenge the revocation or suspension of a license, a person must send written notice of the desire

to appeal the determination of suspension or revocation to the City Administrator within fourteen (14) days after the revocation or suspension determination.

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 according to the State and local traffic laws and in a manner as not to interfere with traffic.
- 2) Peddling from a vehicle shall be done from the right curb side of the vehicle, only, and only when the vehicle is legally parked.
- 3) Peddling to any person standing on the roadway is prohibited.
- 4) The use of electronic sound amplification equipment while peddling 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.
- 6) The sale of liquor by a peddler is permitted.

SECTION 3. Title 3, Chapter 7, Article B of the Batavia Municipal Code is hereby revised and replaced in its entirety as follows:

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:

“*Charitable Organization*” shall mean 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*” shall mean any charitable, benevolent, philanthropic, patriotic, not for profit, or religious purpose.

“*Charitable Solicitation*” shall mean 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.

“*Commercial Solicitation*” shall mean soliciting for the sale or exchange of goods or services in exchange for consideration. Commercial Solicitation shall not include soliciting for charitable or political donations, gifts or subscriptions, and shall not include soliciting for consideration in exchange for printed materials.

“*Registered Solicitor*” shall mean 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*” shall mean a separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

“*Soliciting*” shall mean seeking to gain entry uninvited to private residential property for purposes of addressing the occupants to request orders for goods, services or other things of value, to request donations or gifts, to request information, support, signatures, an audience or other things, material or immaterial, from the occupants. Soliciting includes, but is not limited to, the following activities:

- 1) Commercial Solicitation means a request for consideration in exchange for goods, services or other things of value, including, but not limited to, the following:
 - 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 for delivery or performance in the future;
 - B) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or character;
- 2) C) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication; or
- 3) Non-Commercial Solicitation, which includes 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.
- 4) Non-Monetary Solicitation means request that do not include any exchange of consideration, donation or gift, including, not limited to, canvassing for opinions; advocating for a cause; exchanging ideas; collecting signatures and other such activity that involves request or exchange for money, donations or gifts.

“*Solicitor*” shall mean any person engaged in “soliciting”, as defined herein.

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

- A. Commercial Solicitation Registration: 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: Charitable organizations shall not authorize or allow people to engage in charitable solicitation for the organization within the corporate limits of the City unless such organization has registered with the City by providing the following information to 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.
- C. Exemption from Registration: Registration shall not be required for Non-Monetary Solicitation activity where no consideration, donation or gift of any valuable thing is being sought.

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) business 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 issuance 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 returned 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 OF PROHIBITED SOLICITATION:

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 to invite solicitors or prohibit solicitors at their residences. Every person who desires to prohibit solicitors and to secure the protection intended to be provided by this Article to prohibit solicitors from solicitors at a residence where solicitors is not desired shall comply with the following directions:

- A. Notice Posted: Notice of the determination to prohibit solicitation to any residence shall be given by exhibiting a card, decal or sign not less than three inches by four inches (3"x4") in size in clear view at or near the main entrance(s), point(s) of approach(es) or entry(ies) to the residence, containing the intention to prohibit solicitors displaying the following or similar words:

NO SOLICITORS INVITED
or
SOLICITORS PROHIBITED

- B. The letters shall be at least one-third of an inch (1/3") in height. For purposes of uniformity, the City may provide cards complying with these requirements to persons requesting them at the City or available for printing on the City's website. Alternatively, a person may create their own sign, at their own cost, that complies with the requirements of this Code section.
- C. Such card, decal or sign so posted shall constitute sufficient notice to any solicitor that solicitation at that residence is prohibited.
- D. The City shall enforce the intentions of the occupants of each residence who have evidenced the desire to prohibit solicitation at such residence by posting notice consistent with the provisions of this Section.

3-7B-7: DUTY OF SOLICITORS:

The provisions of Section 3-7B-6 shall apply to every solicitor, regardless of the purpose of the solicitation.

- A. Solicitors shall not solicit at residences that contain notices consistent with the provisions in 3-7B-6 prohibiting solicitors, and the solicitors shall immediately and peacefully depart from any residence displaying such notice.
- B. Regardless of whether any sign is posted at a residence door, a solicitor shall immediately and peacefully depart from a residence 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 a notice exhibited at the residence in accordance with the provisions of subsection 3-7B-6 and 3-7B-7A of this article or to remain on the premises when asked by the occupant thereof to leave as provided in Section 3-7B7B.

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 within the corporate limits of the City of Batavia is prohibited..
- 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:

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.

SECTION 4. Title 3, Chapter 7 of the Batavia Municipal Code is hereby further revised to add Article C as follows:

ARTICLE C. FOOD VENDORS

3-7C-1: DEFINITION

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 by a food vendor under the regulations of the Kane County Health Department.

“Food cart” shall mean any by non-motorized cart, trailer or similar device with wheels that is equipped for or intended to be pushed or drawn by hand, bicycled, or towed by a motorized vehicle equipped or intended for the purpose of selling or offering for sale consumable food items or beverages for immediate delivery and consumption. A food cart is also known as a push cart.

“Food Vendor” shall mean any person who owns and operates 1) a food vending vehicle or 2) a food cart from which food items and/or beverages are sold or offered for sale for immediate delivery and consumption on public or private property in the City. Food vendors do not include restaurants or food establishments selling food on their own premises.

“Food Vending Vehicle” shall mean a motorized vehicle equipped or intended for the purpose of selling or offering for sale consumable food items or beverages for immediate delivery and consumption. A food vending vehicle may also be known as a mobile vending unit.

“Person” shall mean, but is not limited to, any individual, partnership, firm, company, corporation, limited liability company, trust, or group or association of people, including the employees, agents, and independent contractors of the same.

3-7C-2: LICENSE REQUIRED

No person shall operate a food vending vehicle or food cart or own a food vending vehicle or food cart that is operated within the corporate limits of the City of Batavia without a Food Vendor License issued for the food vending vehicle or food cart to the owner or operator. No license is required for deliveries of packaged food intended for preparation and consumption within a residence or places of business.

3-7C-3: LICENSE APPLICATION

Applications for a Food Vendor License shall be made to the Community and Economic Development Director on forms provided, and shall set forth among other things the following:

- 1) Name(s) and main business address and contact information of a) the owner of the food vending vehicle or food cart, b) the operator of the food vending vehicle or food cart, and c) the applicant if different from the owner or operator.
- 2) The length of time a) the owner has owned the food vending vehicle or food cart or b) the operator has been operating the food vending vehicle or food cart.
- 3) If the owner, operator or applicant is not an individual, provide the names, addresses and contact information of all the principals of the owner, operator and applicant.
- 4) A detailed description of the food vending vehicle, including make, model year and VIN, or the dimensions, and description of the food cart.
- 5) Applicant must provide a copy of an approved Kane County Health Department Certificate and/or Kane County Mobile Food Vendor permit and be in compliance with

all applicable County and State requirements for the mobile vending unit or push cart as well as food handling licenses or other requirements.

- 6) Applicant must provide proof of a public liability insurance policy 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, for the food vending vehicle or food cart issued to the owner and/or operator with the City of Batavia named as an additional insured.
- 7) As a condition to the issuance of a license required herein, each food vendor shall execute an agreement that 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 food vending activity.
- 8) No food vending vehicle or food cart shall be operated by a person who is a registered sex offender as defined in the Sex Offender License Act.
- 9) Such other information as the Department of Community and Economic Development may request.

3-7C-3.1: LICENSE ISSUED

The Community and Economic Development Director 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, nor the principals of the entity for which the applicant is applying for a license, nor the owner(s) nor the operator of the food vending vehicle or food cart that will be operated pursuant to the license is a registered sex offender or is in violation of any provision of this Article or the ordinances of any other Illinois municipality regulating food vending.

If the Community and Economic Development Director cannot make these positive determinations, the license shall be denied.

A copy of the license signed by the Community and Economic Development as approved shall be carried by each person operating a food vending vehicle or food cart in the City. A separate license may be required for each separate period for which a food vendor license is approved.

3-7C-4: SPECIFICATIONS AND LIMITATIONS

- 1) Food vending vehicles and food carts 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.

- 2) Food vending vehicles and food carts shall have prominently displayed on the vehicle or cart or available for inspection on the person of the operator at all times when in operation (a) a certificate of insurance coverage meeting the specifications set forth in this Article; (b) the food vendor license issued by the City; (c) an Illinois Department of Revenue Registration Certificate; and (d) the license or permit issued by the Kane County Health Department or as required by regulations of the County Health Department. Food Vendors, and shall comply at all times, when in operation, with all requirements and standards of the Kane County Health Department and shall maintain a current and valid Kane County permit(s) during the term of the license issued by the City.
- 3) Food vending vehicles and food carts shall have sufficient lighting, including a flashing light when the vehicle or cart is stopped that is visible at a distance of five hundred (500) feet.
- 4) Food carts 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.
- 5) Food carts may be equipped with an umbrella, in which case, the umbrella height shall not exceed eight (8) feet above adjacent grade.
- 6) No food cart shall have attached to it any functional bell, siren, light, balloon or other inflatable device, horn, loudspeaker or any similar device.
- 7) No food cart shall have a permanent connection for potable water, wastewater, electric, or otherwise use an electric extension cord or generator.
- 8) Food vending vehicles and food carts shall have a minimum of two (2) litter or trash containers available to customers of the vending vehicle in accordance with Kane County Health Department regulations.
- 9) Food vending vehicles shall have a mechanical refrigeration unit designed and able to keep all perishable ice cream and frozen confections at a temperature between zero degrees (0°) to minus ten degrees Fahrenheit (-10°). Dry ice may not come into direct contact with the ice cream or frozen confection. The use of ice for refrigeration is prohibited.
- 10) An approved fire extinguisher shall be maintained in all food vending vehicles using electric, gas, or solar power for its operation at all times the vehicle is being operated.
- 11) Food vending vehicles using propane, natural gas or some other combustible gas shall have a leak detection device.
- 12) A K type extinguisher shall be maintained in all food vending vehicles with deep fat fryers that is of appropriate size in relation to the size of the deep fat fryer at all times the vehicle is being operated.

- 13) Appropriate fire extinguishers or fire suppression systems shall be maintained in all food vending vehicles at all times when the vehicles are being operated.
- 14) No alcoholic liquor or beverages containing any alcoholic liquor may be sold or given away from any food vending vehicle or food cart.

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 food vendors and the operation of food vending vehicles and food carts:

- 1) Food vending vehicles and food carts 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. Sponsors 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.
 - D) Food vendors may operate on premises owned by the vending vehicle owner with a principal business that is not necessarily related to food vending.
- 2) Food vending vehicles and food carts may be operated 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) Food vending vehicles and food carts 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 on any property so as to be visible to the public.
- 4) Food vending vehicles and food carts shall be cleaned daily and shall be maintained in a safe, healthy and clean condition.

- 5) Food vending vehicles and food carts shall not be operated so as to impede, endanger or interfere with pedestrian or vehicular traffic.
- 6) Food vending vehicles and food carts shall not occupy any off-street public parking space.
- 7) Operators shall maintain a minimum clearance of no less than five (5) feet around a food cart for the passage of pedestrians. The immediate area around the food cart shall be maintained clean of garbage, trash, paper, cups, cans or litter associated with the food cart operation.
- 8) Food vending vehicle and food cart operators shall be responsible for the proper disposal of waste and trash associated with the operation. Placement of containers for the collection of waste and trash is prohibited on streets, sidewalks or public places.
- 9) The following activities are prohibited:
 - A. Vending from the left, or driver's side, of a food vending vehicle.
 - B. Vending from a food vending vehicle directly to another vehicle.
 - C. The use of amplified music from a food vending vehicle, provided that amplified mechanized bells or chimes are permitted only while a food vending vehicle is in motion.
 - D. Vending if a food vending 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 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) Food vending vehicles and food carts 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, offered for sale or displayed from a food vending vehicle or food cart.
- 12) The operation of a food vending vehicle or food cart shall not deface, discolor, mar, mark, damage or destroy the public right-of-way. All stains or marks left on the premises where food vending is done from cooking, wheels, spillage or any other cause shall be removed within forty-eight (48) hours.

13) No person who is afflicted with or is the carrier of any infectious or contagious disease shall have any contact with food products or engage in 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 a food vendor license shall be the same as for licenses pursuant to 3-7A-3.2 regarding Peddlers.

3-7C-7: EXEMPTIONS

No license fee shall be required from any person peddling or selling the products that are marketing directly from a local farm or garden, nor from any other person from whom the City 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 Community and Economic Development 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.

SECTION 2. As of the effective date of this Ordinance,

SECTION 3. This Ordinance shall be in full force and effect upon its presentation, passage and publication according to law.

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this ____ day of _____, 2021.

APPROVED by me as Mayor of said City of Batavia, Illinois, this this ____ day of _____, 2021.

CITY OF BATAVIA, ILLINOIS ORDINANCE 21-31

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	Baerren					Solfa				
2	Lehman					Wolff				
3	Ajazi					Chanzit				
4	Malay					Knopp				
5	Uher					Beck				
6	Cerone					Russotto				
7	Volgelsinger					Miller				
Mayor Schielke										
VOTE: ___ Ayes ___ Nays ___ Absent ___ Abstentions Total holding office: Mayor and 14 aldermen										

ATTEST:

Kate Garrett, City Clerk