

CITY OF AUBURN HILLS

COUNTY OF OAKLAND

STATE OF MICHIGAN

ORDINANCE NO. 16-878

AN ORDINANCE TO AMEND CHAPTER 22, ARTICLE III, DIVISIONS 1 AND 2 OF THE CITY OF AUBURN HILLS CODE OF ORDINANCES, AS AMENDED, TO REGULATE SOLICITORS AND PEDDLERS IN THE CITY AND TO ADD DIVISION 3 TO REGULATE THE SALE OF FROZEN CONFECTIONS.

THE CITY OF AUBURN HILLS ORDAINS

Section 1 – Ordinance

Sec. 22-81 is amended as follows:

Sec. 22-81. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Door-to-door canvasser means a person who is a representative of a non-profit organization or agency and, who, in that capacity and solely as a benefit to the agency or organization, calls at the homes of residents for the purpose of selling items for charitable fundraising purposes, soliciting contributions, and/or collecting signatures, distributing information or seeking volunteers. Door-to-door canvassers shall also include persons engaged in noncommercial, religious canvassing and persons engaged in the distribution of handbills and/or pamphlets, signed or unsigned, political or otherwise.

Food vendor or vendor means any person who sells, offers for sale or assists in the sale or preparation of any prepared foods as defined in this section from a motor vehicle as motor vehicle is defined in the Michigan Vehicle Code and does not include frozen food vendor as defined in this article.

Person means and individual, organization, group, association, partnership, corporation, trust, business entity or any combination of the above.

Prepared food means a food product that has been prepared, processed, cooked and/or packaged and/or frozen for and/or by a prepared food vendor for reasonably immediate consumption by those persons who purchase the prepared food items from the prepared food vendor and does not include *frozen confections* as defined in this article.

Registrant means any person required to register pursuant to this article.

Solicitor or Transient Merchant means any person traveling by foot, automotive vehicle or other conveyance from place to place, from house to house, or from street to street carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck farm products or provisions, offering and exposing such for sale or making sales and delivering articles to purchasers, or who takes or attempts to take orders for sale of goods, wares and merchandise, books or magazines, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not. Any person who solicits, orders and as a separate transaction makes deliveries to purchasers as part of a transient itinerant merchant scheme or design to evade the provisions of this article shall be deemed a transient merchant. These terms shall include the terms "peddler," "hawker," and "huckster."

Sec. 22-82 is amended to read as follows:

Sec. 22-82. - Prohibitions.

(a) No Registrant shall:

- (1) Sell or offer for sale any unsound or unripe or unwholesome food or defective, faulty, incomplete, or deteriorated merchandise.
- (2) At any time in the conduct of the registered business, obstruct any street, alley, sidewalk, or driveway.
- (3) Remain in front of, or at the side of, any property against the wish or desire of the property owner or the tenant or occupant of such property.
- (4) Engage in the registered business within 500 feet of the entrance of any school building between the hours of 9:00 a.m. and 5:00 p.m. on the days when school is in session.
- (5) Engage in the registered business on those portions of streets on which a public park abuts.
- (6) Stop his vehicle for the purpose of engaging in a registered business within 50 feet of any street intersection in the city.
- (7) Fail to comply with all provisions of the traffic ordinances of the city.
- (8) Remain standing at any one place on any of the streets, alleys, or public places. No Registrant shall stand or be on any public street, alley, or public place, or in any building or place of business abutting on any street, alley, or public place, and attract persons or induce persons to congregate on any public sidewalk, street, alley, or public place so as to tend to obstruct traffic, whether pedestrian or vehicular, in the city for a longer period of time than five minutes while engaging in the registered business.
- (9) Remain upon premises owned by another person for a longer period of time than five minutes while engaging in the registered business without first having obtained a letter determination from the city building department that the conduct of the licensed business is a permitted use on the subject property under the city zoning ordinance.

(10) Engage in the registered business outside the hours of 10:00 am to 7:00 pm.

(11) Sell or deliver any merchandise which is ordinarily sold by weight or measure by the use of any other than standard weight or measure.

(12) Utilize any bell, chime, or other noisemaking device for the purpose of attracting persons to buy or order the merchandise the Registrant has for sale. This prohibition shall not be construed to exclude the customary horn required under the motor vehicle laws of this state.

(13) Call out or make any noise of any kind whatsoever, or use a bell, horn, or other noisemaking device with a view of attracting persons to buy or order merchandise or service the Registrant has for sale.

(b) The city council may from time to time adopt such additional reasonable rules and regulations, not inconsistent with this article, as may be necessary to regulate and govern the solicitors or vendors of any foodstuffs intended for human consumption on the streets, sidewalks or public places in the city.

Sec. 22-83 is amended to read as follows:

Sec. 22-83.- Articles prohibited or restricted.

(a) No solicitor or vendor, whether registered or not under this article, shall peddle or sell any uncooked meat/meat products of any kind and/or uncooked poultry or fresh, cured or smoked fish of any kind, except that prepared/packaged food vendors may engage in the sale of prepared/packaged foods as provided for in this article.

Sec. 22-84 is amended to read as follows:

Sec. 22-84. - Inspection of food articles.

(a) The sale of fruits, vegetables, perishable foodstuffs, prepared foods shall be subject to inspection by the county health department.

(b) Prepared foods shall be sold only from properly working and operating refrigerated and/or food preservation trucks of modern design approved by the county health department and the city.

Sec. 22-85 is amended to read as follows:

Sec. 22-85 -No Solicitation Signs and Compiled List

(a) Posted or notified. No person shall enter upon private property of a residence or business after having been expressly notified by the occupant, or where there is placed on such premises a sign bearing the words "No Soliciting," "No Peddlers," "No Agents," "No Canvassing," or any similar notice indicating in any manner that the occupants of such premises do not desire to have solicitors or canvassers call upon them.

(b) Any person who owns and/or occupies a residence and/or business in Auburn Hills who does not wish to have solicitors enter upon and/or call upon the residence or business to solicit may inform the city clerk's office of the same in writing and the city clerk's office shall keep on file a list of the addresses of those persons that do not want solicitors to enter upon and/or call upon their residence and/or place of business. A list of the addresses of those persons not wanting solicitors to enter upon and/or call upon their residence and/or place of business shall be given to each person who files an application for a solicitation license in Auburn Hills.

Sec. 22-86. - Establishment of Do-Not-Knock Registry.

(a) The city clerk shall establish and maintain the Do-Not-Knock Registry.

Any person in lawful possession and occupancy of any residence, house, apartment, or other dwelling within the city may request that the city place and maintain his or her residence, house, apartment, or dwelling on the Do-Not-Knock Registry by submitting a written request on a form supplied by the city clerk. The written request shall contain the following:

- (1) The name of the person completing the form.
- (2) The complete address of the residence, house, apartment, or dwelling to be placed on the registry.
- (3) The date the form was completed.
- (4) A statement that solicitors shall not knock, ring the doorbell, or otherwise physically call at his or her residence, house, apartment, or dwelling.
- (5) Any other information reasonably required by the city to verify the identity of the person completing the form as a lawful occupant and possessor of the residence, house, apartment, or dwelling.

(b) Re-registering on the Do-Not-Knock Registry

Every person who requests that the city place and maintain his or her residence, house, apartment or dwelling on the Do-Not-Knock Registry shall be required to re-register his or her residence, house, apartment, or dwelling every five years. Any residence, house, apartment, or dwelling that is not re-registered shall be removed from the registry pursuant to this section.

Sec. 22-87. - Removal from Do-Not-Knock Registry.

Any person in lawful possession and occupancy of any residence, house, apartment, or other dwelling within the city may request that the city remove his or her residence, house, apartment, or other dwelling from the Do-Not-Knock Registry by submitting a written request on a form supplied by the city clerk. The written request shall contain the following:

- (a) The name of the person completing the form.
- (b) The complete address of the residence, house, apartment, or dwelling to be removed from the registry.
- (c) The date the form was completed.
- (d) A statement that his or her residence, house, apartment, or dwelling shall be removed from the Do-Not-Knock Registry.
- (e) Any other information reasonably required by the city to verify the identity of the person completing the form as a lawful occupant and possessor of the residence, house, apartment, or dwelling.

After being placed on the Do-Not-Knock Registry, a residence, house, apartment, or other dwelling shall remain on the registry until one of the following occurs:

- (a) The city clerk receives a written request to remove the residence, house, apartment, or dwelling from the registry pursuant to this Section.
- (b) The city receives written notice that the person who submitted the request to have the residence, house, apartment, notice, or dwelling added to the registry pursuant to Section 22 is no longer a lawful possessor or occupant of the premises.
- (c) The expiration of five calendar years, expiring on December 31 of the fifth full calendar year, from the date of the form submitted pursuant to Section 22.

Sec. 22-88. - Copies of Do-Not-Knock Registry.

The city clerk shall provide a copy of the then-current Do-Not-Knock Registry to each person issued a peddler's registered pursuant to this chapter. A copy of the Do-Not-Knock Registry shall also be available for public inspection in the city clerk's office during regular business hours.

The failure to add a residence, house, apartment, or other dwelling to the Do-Not-Knock registry, or to remove a residence, house, apartment, or other dwelling from the registry, shall not be grounds for any claim against the city.

Sec. 22-89. - Enforcement.

The provisions of this article shall be enforced by the city police department and its duly authorized representatives. They shall be authorized to enter, during normal business hours, for the purposes of enforcement of this article, including inspection purposes, any vehicle for which a current registration is in effect or for which a registration has been applied. A registration can be denied, revoked or suspended if entry to the vehicle where the registration would be in effect is refused during normal business hours.

Sec. 22-90-22-100. - Reserved.

DIVISION 2. - REGISTRATION

Sec. 22-101 is amended to read as follows:

Sec. 22-101. - Required.

No person shall be a solicitor or transient merchant and/or prepared food vendor within the city without first registering with the city.

Sec. 22-102 is amended to read as follows:

Sec. 22-102. - Exempt persons.

The following persons are not required to be registered under this section:

- (1) Persons engaged in the sale of daily or weekly newspapers or milk delivery licensed under state law, or operating concessions which are, as regulated by the city zoning ordinance, accessory uses to the principal permitted use of the property on which they are located;
- (2) :Persons, entities, corporations and/or organizations participating in a city sponsored event and/or an event that the city is one of the co-sponsors.
- (3) Door-to-door canvassers including persons engaged in charitable, religious, civic, political or other nonprofit canvassing, non-commercial soliciting or selling items for fundraising purposes.
- (4) Agents of utility companies or firms franchised by referendum of the city electorate or agents of such firms governed by franchise ordinance enacted by the city council following an affirmative vote on the question by the electorate.

Sec. 22-103 is amended to read as follows:

Sec. 22-103. - Application-Required submissions.

(a) A person desiring to be a prepared food vendor shall meet all the requirements ohhis section and section 22-104 and, in addition, shall submit:

- (1) A copy of such person's most recent driver's license or state issued identification card, and the city may perform a background check.
 - (2) Proof of inspection for safety equipment by the city police department and/or their duly authorized representative and a certified copy of current county/state license, in accordance with section 22-105
 - (3) Proof of \$500,000.00 liability insurance which must be kept current during the lifetime of the registration.
- (b) All applications for a registration for the sale of food for human consumption shall be referred to the county health department for approval and determination as to whether the applicant proposes

to sell any foodstuffs, the peddling or vending of which is prohibited, and whether the applicant is free from communicable diseases and has provided for the caring and storage of such foodstuffs in a sanitary manner. No registration shall be issued by the city under this article until the application has been approved by the county health department.

Sec. 22-104 is amended to read as follows:

Sec. 22-104. - Same-Contents.

A person desiring to be a peddler, solicitor, transient merchant, and/or prepared food vendor shall file an application in writing with the city clerk or his or her designee upon forms provided and maintained in that office. The city clerk shall require the applicant to state in writing upon such forms:

- (1) His full name, residence, and address. A post office box alone shall be insufficient to identify the applicant's residence.
- (2) The kind of merchandise or service the applicant proposes to peddle, solicit, or sell.
- (3) Whether the applicant expects to use a vehicle and the description of such vehicle, together with the vehicle license number and vehicle identification number.
- (4) Whether applicant is a farmer, artisan, or veteran, or blind person. If an artisan or farmer, the applicant shall give the location of the shop or farm, and the size of the farm. If a war veteran, the applicant shall give the date of discharge, and the number of the applicant's county veteran's license.
- (5) If the applicant is applying for a free license, the applicant shall affirm that: in the case of an artisan, that all of the merchandise to be sold is manufactured by the applicant personally; in the case of a farmer, that the products to be sold are produced by the applicant, and the applicant's regularly employed farm help; in the case of a war veteran, that all of the merchandise or services to be offered for sale by the applicant are his own, and that the license will be used by the applicant personally, and by no other person. If an applicant claims to be blind, proof of blindness shall be certified by the county health department. If the applicant is a dealer in merchandise being delivered through interstate commerce, the applicant shall affirm that all of the merchandise being sold in the city is to be delivered directly to the customer from stocks of merchandise located outside the state. The applicant shall also list the types of merchandise to be sold and the person by whom the orders will be filled.
- (6) The application shall be accompanied by a government issued identification containing a photograph of the applicant.

(6) The city may perform a background check.

(8) Reserved.

Sec. 22-105. -Reserved.

Sec. 22-106 is amended to read as follows:

Sec. 22-106. - Fees; term; exemption.

- (a) Registrations granted under this article shall not be transferable or assignable.
- (b) The fees for a registration under this article shall be as established from time to time by resolution of the city council.
- (c) All registrations issued under this article shall expire on December 31 of each year following the date of issuance.
- (d) This article is not intended to prohibit the sale by mechanics and artisans of products of their own manufacture, the sale by farmers of their own products, either produced by themselves or by their regular farm employees, any war veteran who has first obtained the registration pursuant to Act No. 359 of the Public Acts of Michigan of 1921 (MCL 35.441 et seq.), as amended, any persons who are taking orders for the sale of merchandise to be delivered through interstate commerce, or the sale by blind persons of any products, whether made by themselves or not. All such persons must first obtain a registration, as required by this article, and shall furnish satisfactory proof to the city clerk or his or her designee that they are the persons that they represent themselves to be and are entitled to such classification, and they must comply with all of the terms and conditions of this article. Upon so doing, the city clerk or his or her designee shall register the applicant, free of charge, entitling them to engage in the class of business and for the sale of the type of merchandise indicated in their application and no other.

Sec. 22-107. - Revocation or suspension; hearings.

A registration issued under this article may be revoked or suspended for the violation of any of the terms of this article, the health and/or food laws of the state or the criminal statutes of the city, state, or the United States. Such revocation shall be by giving written notice to the Registrant. The Registrant shall be entitled to a hearing before the city council, if such hearing is demanded by him in writing and presented to the city clerk or his or her designee within ten days of the filing of the written demand at the following regular meeting of the city council or at a special meeting of the city council called for such purpose. The city council, after hearing both sides of the question, shall act as sole judge as to whether or not revocation or suspension shall stand.

Sec. 22-108 is amended to read as follows:

Sec. 22-108. - Content; display.

- (a) The registration granted under this article shall be in such form as to contain a photograph of the Registrant, his address, signature, and physical description. All Registrants shall have on their person the registration card while engaged in peddling, soliciting, or selling.
- (b) No Registrant shall change, remove or obliterate any entry made on such registration.
- (c) Failure to conspicuously and constantly exhibit the registration while engaged in the registered business shall be sufficient cause for suspension or revocation of such registration.
- (d) It shall be the duty of every Registrant to exhibit his or her registration to any police officer or any person, when requested to do so. Failure to show the registration upon request shall be deemed a violation of this article.

(e) The registration shall contain a statement indicating that the registration is not an endorsement by the city of Auburn Hills of the person, company or products sold.

Sec. 22-109 is amended to read as follows:

Sec. 22-109. - Physical examination.

(a) Whenever required by the county health department, any person registered under this article, shall submit to a physical examination by a physician approved by the county health department.

Sec. 22-110 - Requirements for temporary events, temporary event sponsors and temporary event concessionaires is deleted in its entirety.

DIVISION 3 - FROZEN CONFECTION VENDORS

Sec. 22-111 is added to read as follows:

22-111 - Definitions.

Frozen confection means ice cream, ice, popsicles, ice cream bars, frozen candy, frozen dairy products and all other ice cream or other frozen sugar items with the exception of soft ice cream which shall not be sold.

Frozen confection vendor means any person who sells, offers for sale or assists in the sale of any frozen confection from a motor vehicle as motor vehicle is defined in the state motor vehicle code. Peddler means a person who offers merchandise or services for sale or rent while moving from place to place.

Sec. 22-112 is added to read as follows:

Sec. 22-112 Prohibitions and restrictions

The peddling, selling, vending or giving away of wrapped frozen ice cream bars, frozen ice known as popsicles, other types of ice cream and/or frozen confection products from pushcarts or bicycles is prohibited as a necessary police measure for the prevention of traffic accidents and personal injuries in the streets of the city. The peddling, selling and/or vending of wrapped frozen ice cream bars, frozen ice known as popsicles, other types of ice cream and frozen confection products shall be in accordance with the regulations of this article.

Sec. 22-113 is added to read as follows:

Sec. 22-113 Inspection of frozen confection sales.

Frozen confection products shall be sold only from properly working and operating refrigerated trucks of modern design approved by the county health department and the city and in compliance with all city, county and state regulations.

Sec. 22-114 is added to read as follows:

Sec. 22-114 Sales to minors; warning lights required on vehicle.

No person peddling, selling or vending frozen confection products from vehicles shall make sales to minors under the age of 16 years unless there is displayed on the vehicle properly operating vehicle flashing warning lights visible from the front and rear and from each side of the vehicle which, under normal atmospheric conditions, are visible from a distance of 500 feet unless such vehicle is stopped in a legal parking location not closer than 100 feet to the nearest intersecting street.

Sec. 22-115 is added to read as follows:

Sec. 22-115 License

No person shall be a frozen confection vendor within the city without first obtaining a registration from the city.

(a) A person desiring to be a frozen confection vendor shall meet all the requirements of this section in addition, shall submit:

(1) A copy of such person's most recent driver's license, and the city shall perform a background check.

(2) Proof of inspection for safety equipment by the city police department and/or their duly authorized representative and a certified copy of current county/state license in accordance with section 22-113.

(3) Proof of \$500,000.00 liability insurance which must be kept current during the lifetime of the registration.

(b) If the applicant applying for a registration to be a frozen confection vendor will be selling and/or vending the frozen confection on behalf of another person and/or business entity, and/or if the motor vehicle to be used by the applicant is owned by another person and/or business entity, the applicant shall set forth on its application the name, address and telephone number of such person and/or business entity and, if the business entity is a corporation, the applicant shall set forth the state of incorporation, as well as the registered agent of such corporation.

Sec. 22-116 is added to read as follows:

Sec. 22-116-Issuance/denial of registration

(a) The city clerk shall issue the frozen confection vendor's registration only if all of the following requirements have been met:

(1) The required fees have been paid.

(2) The application conforms in all respects to the provisions of sections 22-104, 22-106 and 22-115, of this chapter.

- (3) The applicant has not made a material misrepresentation of fact and/or falsified any of the contents of the application.
 - (4) The applicant has not had a frozen confection vendor's registration denied or revoked by the city of Auburn Hills within a period of one (1) year prior to the date of the application.
 - (5) The applicant has never been convicted of operating a motor vehicle under the influence of liquor, operating a motor vehicle within an unlawful blood alcohol content, operating a motor vehicle under the influence of narcotics and/or other controlled substances, operating a motor vehicle while visibly impaired and/or any other drinking and driving offenses and/or any other offenses pertaining to driving and narcotics and/or controlled substances.
 - (6) The applicant does not pose an unreasonable risk and/or hazard to those persons to whom the frozen confections will be sold or offered for sale.
 - (7) The applicant has a valid and unrestricted driver's license.
 - (8) The applicant has never been convicted of a felony and/or convicted of any sexual offenses.
 - (9) The applicant has met all other requirements of this division.
- (b) The city clerk shall deny the application for the frozen confection vendor's registration if any of the requirements set forth in subsection 22-116(a) are not met. In the event that the application for the frozen confection vendor's registration is denied by the city clerk, written notice of such denial shall be given to the applicant specifying the ground or grounds for such denial and advising the applicant that the applicant may request in writing a hearing before the city council appealing the denial of the frozen confection vendor's registration. The city council shall hold a hearing within thirty (30) days from the date of the applicant's written request for a hearing appealing the denial of the frozen confection vendor's registration.

Sec. 22-117 is added to read as follows:

22-117 - Revocation of Registration

The city clerk shall revoke the registration for the frozen convection vendor if he or she subsequently determines any of the requirements set forth in subsection 22-116(a) are not met during the term of the registration. In the event that the registration is revoked, written notice of such denial shall be given to the Registrant specifying the ground or grounds for such revocation and advising the applicant that the applicant may request in writing a hearing before the city council appealing the denial of the registration. The city council shall hold a hearing within thirty (30) days from the date of the applicant's written request for a hearing appealing the revocation of the frozen confection vendor's registration.

Sec. 22-118 is added to read as follows:

Sec. 22-118. - Physical examination.

(a) Whenever required by the county health department, any person registered under this article, shall submit to a physical examination by a physician approved by the county health department.

Sec. 22-119-22-130 is reserved.

Section 2. Repealed

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 3. Severability.

If any section, clause or provision of this Ordinance shall be declared to be unconstitutional, void, illegal, or ineffective by any Court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void, or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

Section 4. Savings.

The proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this Ordinance takes effect are saved and may be consummated according to the law when they were commenced.

Section 5. Effective Date.

The provisions of this Ordinance are hereby ordered to take effect upon publication in the manner prescribed by the Charter of the City of Auburn Hills.

Section 6. Adoption.

This Ordinance is hereby declared to have been adopted by the City Council of the City of Auburn Hills at a meeting thereof duly called and held on the 8th day of August, 2016, and ordered to be given publication in a manner prescribed by the Charter of the City of Auburn Hills.

AYES: 7
NAYES: None
ABSTENTIONS: None
ABSENT None

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

I, the undersigned, the duly qualified Clerk for the City of Auburn Hills, Oakland County, Michigan, do hereby certify that the foregoing is a true and complete copy of Ordinance No. 16-878 adopted by the Auburn Hills City Council on the 8th day of August, 2016, the original of which is in my office.

Terri Kowal, City Clerk

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