

ORDINANCE NO: 38 -2011
INTRODUCED BY: Henry

AN ORDINANCE ENACTING A NEW CHAPTER 743, ENTITLED
“ICE CREAM TRUCKS”, OF THE BUSINESS REGULATION CODE OF THE
CODIFIED ORDINANCES; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Richmond Heights has not permitted the sale of ice cream and other frozen items from motor vehicles on City streets, but has determined that under proper regulation, such activity can be permitted and not interfere with the public health, safety, and general welfare; and

WHEREAS, it is necessary to further the public health, safety, and general welfare to have in place substantive regulations for vending from ice cream trucks in the City at the earliest possible time during this summer season;

NOW, THEREFORE, Be it Ordained by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: Part Seven of the Business Regulation Code of the Codified Ordinances of the City is amended to add a new Chapter 743 to be entitled “Ice Cream Trucks” to read as follows:

CHAPTER 743
Ice Cream Trucks

<u>743.01</u>	Definitions.
<u>743.02</u>	License Required.
<u>743.03</u>	Inspection and Equipment Required.
<u>743.04</u>	Insurance.
<u>743.05</u>	Restrictions.
<u>743.06</u>	Duties of Approaching Vehicles.
<u>743.99</u>	Penalty.

743.01 DEFINITIONS.

As used in this section:

(a) "Ice cream truck" means every motor vehicle from which ice cream, popsicles, ice sherbets or frozen desserts of any kind are dispensed for purposes of retail sale on the City's streets.

(b) "Operator" means every person, firm, partnership, or corporation who or which owns, leases, contracts or in any other fashion permits a person to operate upon the City's streets any ice cream truck for the purpose of vending.

(c) "Person" means every driver and/or passenger of an ice cream truck.

(d) "Vend" or "vending" means offering ice cream, popsicles, ice sherbets or frozen desserts for sale from a motor vehicle on the City's streets.

743.02 LICENSE REQUIRED.

(a) No operator shall perform or cause to be performed vending activities as defined in this chapter without having an unrevoked license from the City to do so.

(b) Licenses under this section will be issued by the Chief of Police upon an application form provided by the City being accurately completed by an operator and meeting the requirements and restrictions set forth in this chapter, including the annual inspection required by section 743.03.

743.03 INSPECTION AND EQUIPMENT REQUIRED.

(a) Any person vending from ice cream trucks on the City's streets shall have any vehicle used for such vending inspected by the City's Division of Police for safety and for equipment required by this Section 743.03. Said inspection for safety may include, but may not be limited to, inspection of all lights, tire tread, mirrors, and any other features deemed relevant to safety by the City's Division of Police. The inspection shall be conducted annually prior to the issuance of a license, as required in this chapter, and at such other times as the Division of Police deems necessary in order to assure compliance with this chapter.

(b) The inspection provided for in division (a) of this section shall take place before any license is issued. Such license will not be

issued unless all vehicles to be used by the applicant for vending are equipped with the following:

- (1) Two six-inch or larger flashing amber lights in front and on top of the vehicle;
- (2) Two six-inch or larger flashing amber lights in the rear and on top of the vehicle;
- (3) Front and rear vehicle signs with the words "Slow-Children" displayed in eight-inch black letters on a yellow background;
- (4) A stop signal arm that can be extended horizontally from the left side of the truck duplicating the design, as set forth in the *State Manual of Uniform Traffic Control Devices*. This arm shall be red and white in color and shall contain two alternately flashing lights three to five inches in diameter at the top and bottom thereof, visible at 300 feet to the front and rear in normal sunlight upon a straight level street. The two lights facing to the front shall be red and the two lights facing to the rear shall be red. The bottom of the signal arm shall be 42 inches above the highway.

The driver of an ice cream truck stopped on the streets for the purpose of vending shall actuate the special flashing lights and extend the stop signal arm. These lights and the stop signal arm shall not be used when the truck is in motion, nor at any time the truck is stopped for a purpose other than vending;

- (5) A convex mirror mounted on the front so that the driver in his or her normal seating position can see the area in front of the truck obscured by the hood;
- (6) Once issued, the license must be prominently displayed in plain view at all times that the vehicle is in operation within the City; and
- (7) Each applicant will pay the non-refundable fee of one hundred dollars (\$100.00) for such license for that calendar year.

743.04 INSURANCE.

- (a) No license shall be issued to an operator or person selling from an ice cream truck unless a certificate is furnished to the City showing that the vendor is carrying the following minimum amounts of insurance: general commercial liability insurance in an amount of not less than one million dollars (\$1,000,000) for injuries, including those resulting

in death, resulting from any one occurrence and on account of any one accident, and property damage insurance in an amount of not less than one hundred thousand dollars (\$100,000) for damages on account of any one accident or occurrence.

(b) Insurance certificates shall contain an agreement signed by the insurance company that prior to modification, cancellation or termination of the subject policy, advance written notice of at least thirty (30) days shall be sent to the City's Division of Police by said insurance company.

743.05 RESTRICTIONS.

(a) A person shall vend only when the ice cream truck is lawfully stopped.

(b) A person shall vend only from the side of the truck away from moving traffic and as near as possible to the curb or side of the street. Double parking is prohibited. For purposes of this Section 743.05, "double parking" shall mean stopping the truck for the purpose of vending products alongside of another vehicle already parked parallel to the curb.

(c) A person shall not vend to a person standing in the roadway.

(d) Ice cream trucks shall be limited to travel only on public streets when vending products. Travel within public parks and vending on the portion of any street which is adjacent to public park property is prohibited.

(e) The operator of any ice cream truck which traverses the streets of the City for the purpose of vending products shall submit to the City's Division of Police, prior to commencing business each year, or as requested hereafter, a detailed listing of the routes to be traveled each day by said motor vehicle. The Division of Police shall approve or disapprove such routes within 30 days thereafter. Any routes not approved by the Division of Police shall not be utilized by said operator. Disapproval of a route shall be only for traffic safety or other safety reasons. There shall be no vending on Richmond Road, Highland Road, Monticello Boulevard, Chardon Road, Trebisky Road, White Road, Brush Road, and Wilson Mills Road, as well as within 100 yards of any school boundary. There shall be no vending between sunset, as defined in a newspaper of general circulation within Cuyahoga County, and 10:00 a.m. the following day.

(e) No person convicted of any of the following crimes, in any jurisdiction, shall be permitted to operate or be a passenger on a vehicle

for vending within the City: any sex crime, domestic violence crime, any crime against or involving a minor, any crime of violence. No person who has been convicted of three or more moving traffic offenses in any jurisdiction within the last two years shall be permitted to operate an ice cream truck. No license, as required in this chapter, shall be issued to any owner or operator of such vehicle until driving records of every operator of such vehicle are provided to the Division of Police and approved by the Chief of Police.

(f) The applicant shall supply to the City, proof of a criminal record check. Such criminal history shall be obtained by the applicant by obtaining a set of fingerprints, which shall be sent to the Ohio Bureau of Criminal Investigation for such record check. The results of said record check from the Ohio Bureau of Criminal Investigation shall be supplied to the Division of Police with the license application for review. This provision applies to all persons as defined in Section 743.01(c).

(g) The applicant shall supply the City, if applicable, the proper permit from the County Board of Health for vending food products.

(h) The driver of an ice cream truck shall not back up an ice cream truck to make or attempt to make a sale.

743.06 DUTIES OF APPROACHING VEHICLES.

(a) The driver of a vehicle meeting or overtaking, from either direction, an ice cream truck stopped on the street, shall stop no less than 25 feet from the front or rear of said truck when the flashing lights and stop signal arm as provided for in division (d) of this section are in use. After stopping, a driver may proceed past such truck at a reasonable and prudent speed, not exceeding 15 miles per hour, and shall yield the right-of-way to any pedestrian who crosses the roadway to or from the ice cream truck.

(b) The driver of vehicle on a street with separate roadways separated by a divider of any kind need not stop upon meeting or passing an ice cream truck that is located on the other parallel roadway.

743.99 PENALTY.

(a) Whoever violates or fails to comply with any of the provisions of this chapter is guilty of a misdemeanor of the fourth degree for a first offense and shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned not more than 30 days, or both, if an individual person, and if not an individual person, shall be fined not more than one thousand dollars (\$1,000) for each offense. For any subsequent

offense, such person is guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than 180 days, or both, if an individual, and shall be fined not more than five thousand dollars (\$5,000), if an organization, subject to the provisions of Sections 501.11 and 501.12 of the General Offense Code, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

(b) The conviction and punishment of any person for peddling or soliciting without a license shall not excuse or exempt such person from the payment of any license fee due or unpaid at the time of such conviction, and nothing in this chapter shall prevent a criminal prosecution for any violation of any provision of this chapter.

Section 2: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: This Ordinance is declared to be an emergency measure immediately necessary for the preservation of the public health, safety, and general welfare of the citizens and motorists in the City of Richmond Heights and for the further reason that it is necessary to immediately enact a new chapter of the Business Regulation Code of the City regulating ice cream trucks for the safety of the public; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: _____

Daniel J. Ursu, Mayor

APPROVED: _____

ATTEST: _____

Betsy Traben
Clerk of Council

David H. Roche
President of Council