

ORDINANCE 2005-37  
Passed August 2, 2005

AN ORDINANCE REPEALING ORDINANCE 2005-22 AND ADDING CODIFIED ORDINANCE CHAPTER 715 ENTITLED MOBILE ICE CREAM VENDOR.

WHEREAS, Council has determined that it is necessary to regulate mobile ice cream vendors within the City.

WHEREAS, Council previously adopted Ordinance 2005-22 setting forth regulations for mobile food establishments within the City.

WHEREAS, it has been determined that changes need to be made to the regulations set forth in Ordinance 2005-22.

NOW THEREFORE BE IT ORDAINED BY THE MUNICIPALITY OF POWELL, DELAWARE COUNTY, OHIO AS FOLLOWS:

Section 1: Council hereby repeals the regulations set forth in Ordinance 2005-22.

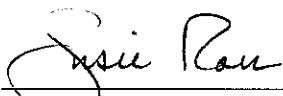
Section 2: Council hereby ratifies and adopts Chapter 715 of the Codified Ordinances of the City of Powell entitled Mobile Ice Cream Vendor, which is attached hereto and incorporated herein by reference.

Section 3: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of the Council and that all deliberations of the Council and any of the decision making bodies of the Municipality of Powell which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the Municipality of Powell, Delaware County, Ohio.

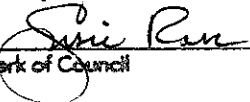
Section 4: That this Ordinance shall take effect as of January 1, 2006.

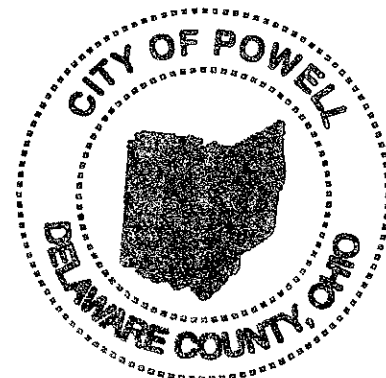
VOTE ON ORDINANCE 2005-37: Y 7 N 0

  
\_\_\_\_\_  
Dan Wiencek Date 8/9/05  
Mayor

  
\_\_\_\_\_  
Susie Ross Date 8/9/05  
Clerk of Council

This legislation has been posted in accordance with the City Charter on this date 8/12/05.

  
\_\_\_\_\_  
Clerk of Council



**Chapter 715**  
**MOBILE ICE CREAM VENDOR**

**DEFINITIONS**

- (a) "Mobile Ice Cream Vendor" means any vehicle from which prepackaged ice cream, popsicles or frozen desserts of any kind are carried, sold, stored, or dispensed for purposes of retail sale, or offered for retail sale, while it is operating within the public rights of way within the City of Powell.
- (b) "Vendor" as used in this chapter shall mean any person who sells or offers for retail sale and immediate delivery prepackaged ice cream, popsicles or frozen desserts of any kind or any person who operates or is otherwise physically within a mobile ice cream vendor vehicle while it is operating within the public rights of way within the City of Powell.
- (c) "Operate" as used in this chapter shall include any person who drives, rides within or is otherwise physically within a mobile ice cream vendor vehicle during any time that it is in the public rights of way within the City of Powell.
- (d) "Permit" as used in this chapter shall mean the permit issued by the Chief of Police of the City of Powell for the purposes of operating as a mobile ice cream vendor on public rights of way within the City of Powell.
- (e) "Application" as used in this chapter shall mean the application for permit to operate as a mobile ice cream vendor within the City of Powell.

**PERMIT REQUIRED**

Mobile ice cream vendors shall first obtain a permit for such activity from the Chief of Police. Permits must be displayed as set forth in this Chapter in order to be effective.

**PERMIT EXPIRATION**

Permits shall only be effective for the calendar year that they are issued, and are void for all subsequent calendar years. Vendors who wish to operate as a mobile ice cream vendor must apply for and obtain new permits for each calendar year that they choose to operate as mobile ice cream vendor.

**ISSUANCE OF PERMIT**

The Chief of Police is authorized to issue permits to mobile ice cream vendors upon full compliance by the vendors with the requirements of this chapter. The Chief of Police is authorized to deny permits to vendors operating as mobile ice cream vendors if they are not in full compliance with the requirements of this chapter. Permits shall be issued in duplicate.

**PERMIT FEES**

The Chief of Police is authorized to collect the fees for the issuance of permits as determined by Council, pursuant to Ordinance. Said fees shall include the costs in processing and preparing the permit, obtaining criminal background checks of the vendors, and any other costs that the Chief of Police deems to be appropriate. The Chief of Police is authorized to adjust the fees charged for the issuance of permits as he deems to be appropriate. The Chief of Police is authorized to adjust the fees for the replacement of lost or destroyed permits, if he deems such adjustment to be appropriate.

**DISPLAY OF PERMIT**

- (a) Every mobile ice cream vendor must display two valid permits on the exterior of the vehicle, in the manner set out in this chapter.
- (b) One permit shall be displayed on the passenger side of the vehicle for each person operating as mobile ice cream vendor.
- (c) Permits displayed on the passenger side of the vehicle shall be displayed in a way as to be clearly visible to all customers, potential customers, patrons or other persons who might purchase prepackaged ice cream, popsicles or frozen desserts of any kind.
- (d) Permits displayed on the passenger side of the vehicle shall be displayed no lower than three feet and no higher than six feet, as measured from the street level.
- (e) Permits displayed on the passenger side of the vehicle shall be displayed no further than three feet away from the window, opening, enclosure or other location on the vehicle

where the vendor generally sells prepackaged ice cream, popsicles or frozen desserts of any kind.

- (f) One permit shall be displayed on the driver side of the vehicle for each person operating as a mobile ice cream vendor.
- (g) Permits displayed on the driver side of the vehicle must be displayed on or within three feet of the driver side door or window.
- (h) Permits displayed on the driver side of the vehicle must be displayed no lower than three feet and no higher than six feet, as measured from street level.
- (i) It shall be the responsibility of the mobile ice cream vendors to maintain their permits in good condition. Permits may be protected by lamination, plastic or other transparent materials, as long as each portion of the permit is clearly visible and legible to customers, potential customers, patrons or other persons who might purchase prepackaged ice cream, popsicles or frozen desserts of any kind. Permits that are lost, illegible, faded or otherwise in poor condition shall be replaced, at the expense of the vendor.
- (j) Each vendor who fails to display two permits in good condition as set forth in this chapter shall be deemed in violation of this section.

#### CONTENTS AND APPEARANCE OF PERMITS

- (a) The background color or shade of permits shall be changed from one calendar year to the next, as directed by the Chief of Police.
- (b) Each permit shall contain a clear color photograph of the vendor. Photographs shall be a minimum of 3 inches by 5 inches, or such other dimensions as directed by the Chief of Police.
- (c) Photographs must have been taken within three months of the date of issuance of the permit, and must accurately depict the current appearance of the vendor. If the Chief of Police determines that the photograph does not accurately depict the current appearance of the vendor, or is unclear in any way, the vendor shall be required to submit photographs deemed acceptable by the Chief of Police. If the appearance of the vendor changes significantly during the calendar year in which the permit is issued, the vendor shall be required to obtain a new permit with a photograph deemed appropriate by the Chief of Police.
- (d) Each permit shall contain the name and address of the vendor.
- (e) Each permit shall contain the name of the owner of the mobile ice cream vendor, and a working telephone number for the mobile ice cream vendor.
- (f) Each permit shall contain the following text in bold print of no less than 24 point font and in all capital letters, "ONLY THE PERSON APPEARING IN THIS PHOTOGRAPH IS AUTHORIZED TO OPERATE THIS MOBILE ICE CREAM VENDOR. IF ANYONE ELSE IS OPERATING THIS MOBILE ICE CREAM VENDOR, CALL THE POWELL POLICE IMMEDIATELY AT (614) 885-3374." The text and telephone number as set forth in this paragraph may be modified as deemed appropriate by the Chief of Police.

#### CRIMINAL BACKGROUNDS OF VENDORS

- (a) Each vendor applying for a permit must also provide authorization for a criminal background check, in order to be approved for a permit. Said authorization shall be provided as part of the application for permit, in a form approved by the Chief of Police.
- (b) Each vendor applying for a permit must list his or her entire criminal background in the application for permit, in a form approved by the Chief of Police.
- (c) No person shall operate as a mobile ice cream vendor if that person has been convicted of a crime (misdemeanor or felony) within any state within the United States if the crime involved any of the following:
  - (1) Any offense of violence, as defined in ORC Chapter 29, that is a felony.
  - (2) Any offense that resulted in the offender being designated a "sexual predator" under Ohio law.
  - (3) Any offense that resulted in the offender being designated a "sexually oriented offender" during any period wherein said offender is required to register as a "sexually oriented offender" under Ohio law.

- (d) If a vendor has been convicted of any of the offenses listed in Paragraph (c) above after such time as a permit has been issued, that vendor shall be required to surrender that permit to the Chief of Police immediately.

#### CONTENTS OF APPLICATIONS FOR PERMITS

The Chief of Police shall be authorized to create and amend as appropriate the form for application for permits under this chapter. Said form may include such information as the Chief of Police deems appropriate, including but not limited to proof of valid operator's license, criminal background history, driving history, name, address, social security number, date of birth, proof of insurance and proof of compliance with City, State, County or other governmental health codes.

#### REVOCATION OF PERMITS

The Chief of Police shall have the authority to revoke or suspend the permit of a vendor under any of the following circumstances:

- (a) Upon substantiated complaints that any vendor is suffering from a communicable disease or has made himself or herself obnoxious to the public by the use of indecent, profane or insulting language, or the unsanitary condition of his or her person or clothing,
- (b) Upon violation by the vendor of any of the provisions of this chapter,
- (c) If it is determined that the vendor made a false material statement in his or her application for a permit.

No person shall operate as a mobile ice cream vendor during any period in which his or her permit has been revoked or suspended by the Chief of Police. Any permit revoked or suspended by the Chief of Police shall be deemed to be null and void upon revocation or during the period of suspension, and vendors displaying such permits shall be deemed to be operating a mobile ice cream vendor without a permit.

#### HOURS OF OPERATION IN RESIDENTIAL AREAS

Mobile ice cream vendors may operate within residential areas of the City only during the time period between 9:00 a.m. and one-half hour after sunset, as determined by the National Weather Service.

#### PENALTY

Any person, firm or corporation which violates or fails to comply with any provision of this Chapter, or fails to comply with any order or regulation made thereunder, shall be guilty of an unclassified misdemeanor and shall be fined not more than five hundred dollars (\$500.00) for each and every violation and noncompliance. A separate offense shall be deemed committed each day during or on which an offense occurs or continues.