

# CITY OF MILWAUKEE

Form CA-43

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January 13, 2003

Honorable Common Council  
City Hall, Room 205

Re: File No. 021327; changing the regulations governing vehicular food peddlers

Dear Council Members:

Under the current scheme of regulation, individuals selling from pushcart-type vehicles on sidewalks are permitted to sell from such pushcarts without any requirement of moving at any particular time. To do so, they must have a permit as provided in Chapter 95 of the Milwaukee Code of Ordinances (direct sellers). However, Chapter 95 specifically exempts individuals who are selling food from pushcarts on sidewalks and leaves such regulation to Chapter 74 of the Milwaukee Code of Ordinances, dealing with food dealers.

This proposed ordinance amends § 74-1-2-0 of the Milwaukee Code of Ordinances in the following ways:

1. It amends the term "public streets" to "public way."
2. It requires that any individual selling food from a sidewalk cart located on the public way in a non-residential area, must also move once each hour.

By merely changing the term "public streets" to "public way," and thereby including sidewalks, § 71-1-2-0 of the Milwaukee Code of Ordinances now makes the section applicable to pushcarts. Thus, the provision creates the following classifications:

1. Individuals selling non-food items from pushcarts as direct sellers in a non-residential area need not move once each hour.
2. Individuals selling food from pushcarts must move once each hour in a non-residential area.

Section 62.11(5) allows the Common Council to regulate for the public health, safety and welfare. Clearly, this proposal is within the power of the Common Council to regulate for the

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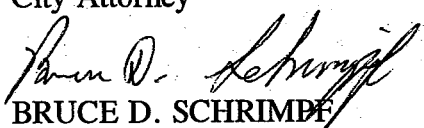
health safety and welfare. However, because of the juxtaposition of Chapter 74 and Chapter 95 of the Milwaukee Code of Ordinances, it is clear that a classification and distinction has been drawn between direct sellers selling non-food items and operators of pushcarts dispensing food in non-residential areas. The former need not move once each hour, and the latter must. A requirement to keep moving in a non-residential area could, conceivably, be justifiable if there were legislative findings regarding the problem to be addressed by having the operators of such carts keep moving. However, in terms of disruption of the public way (sidewalk), we are at a loss to determine why a pushcart selling food would be required to move each hour, while pushcarts selling toys, games, clothing, jewelry, trinkets, etc., need not move. As a result, we are concerned that this regulation as drafted may create an irrational classification attackable as (1) capricious and arbitrary, and (2) a denial of equal protection.

Under the circumstances, we suggest that the Milwaukee Common Council set forth legislative findings as to the evils it intends to correct by requiring pushcarts selling food in non-residential areas to move once each hour but not imposing a similar requirement upon direct sellers engaged in what appears to us to be very similar activity.

Very truly yours,



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