

ORDINANCE NO. 53

TRANSIENT MERCHANT, PEDDLER, CANVASSER AND SOLICITOR

A: DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PEDDLER. A person who goes from house-to-house, door-to-door, business-to-business, street-to-street or any other type of place-to-place, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell and delivering immediately upon sale, the goods, wares, products, merchandise or other personal property that the person is carrying or otherwise transporting. The term **PEDDLER** shall mean the same as the term hawker.

PERSON. Any natural individual, group, organization, corporation, partnership or association. As applied to groups, organizations, corporations, partnerships and associations, the terms shall include each member, officer, partner, associate, agent or employee.

SOLICITOR. A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property or services of which he or she may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as discussed above. The term shall mean the same as the term canvasser.

TRANSIENT MERCHANT. Any person whose business in the city is temporary or seasonal and consists of selling and delivering merchandise within the city, and who in furtherance of the purpose uses or occupies any structure, vehicle or other place for the exhibition and sale of the merchandise.

B: EXCEPTIONS TO DEFINITIONS.

(1) For the purpose of this chapter, the terms peddler, solicitor and transient merchant shall not apply to the following:

- (a) Persons doing business by appointment;
- (b) Persons selling or attempting to sell at wholesale their goods, wares, products or merchandise to retail, wholesale, professional or industrial establishments;
- (c) Persons conducting the type of sales commonly known as garage sales, rummage sales or estate sales, as well as anyone conducting an auction as a properly licensed auctioneer or any officer of the court conducting a court-ordered sale;
- (d) No licenses shall be required for vendors as a preliminary step to the establishment of a regular route service for the sale and delivery of commodities or the providing of services to regular customers; and
- (e) School aged children selling items for fund raisers.
- (f) Persons selling only farm products they have grown themselves.

(2) Exception from the definitions for the scope of this chapter shall not excuse any person from complying with any other applicable statutory provision or local ordinance.

RELIGIOUS AND CHARITABLE ORGANIZATIONS.

(1) Any organization, society, association or corporation desiring to solicit or have solicited in its name money, donations of money or property or financial assistance of any kind or desiring to sell or distribute any item of literature or merchandise for which a fee is charged or solicited from persons other than members of the organizations upon the streets, in office or business buildings, by house to house canvass or in public places for a charitable, religious, patriotic, philanthropic or otherwise non-profit purpose shall be exempt from Paragraph C. of this chapter, provided a sworn application in writing on a form furnished by the city is filed which shall include the following information:

- (a) Name and purpose of the cause for which the license is sought;
- (b) Names and addresses of the officers and/or directors of the organization;
- (c) The period during which the solicitation is to be carried on; and
- (d) Whether or not any commission, fee, wages or emoluments are to be expended in connection with the solicitation.

(2) Upon the foregoing being satisfied, the organization, association or corporation shall furnish all its members, agents or representatives conducting the solicitation credentials in writing stating the name of the organization, name of the agent and the purpose of the solicitation. The credentials shall be kept on the person of the members, agents or representatives during the actual solicitation and be presented to anyone requesting to see same.

C: LICENSING; EXEMPTIONS.

(1) *City license required.* Except as otherwise provided for by this chapter, no person shall conduct business as either a peddler, solicitor or transient merchant without first having obtained a license from the city. The license period will be no longer than six months from the date of issuance. A single license may be issued to a company covering its employees or agents as long as an application, as described herein, is completed, for each individual person operating in the city.

(2) *Application.* Application for a city license to conduct business as a peddler, transient merchant or solicitor shall be made at least ten regular business days before the applicant desires to begin conducting business by completing a form available from the office of the City Clerk. All applications shall be signed by the applicant and shall include the following information:

- (a) Applicant's full legal name, name of business and applicant's current position;
- (b) All other names under which the applicant conducts business or to which applicant officially answers;
- (c) Applicant's permanent home and business address as well as a local address for correspondence;
- (d) Any and all business related telephone numbers, including a number where the applicant can be reached while conducting business in the city;
- (e) A brief written description of the nature of the business, the goods to be sold and the applicant's method of operation;
- (f) A brief statement of the nature, character and content of the advertising done or proposed to be done in order to attract customers (samples may be requested);
- (g) Full legal name of any and all business operations owned, managed or operated by applicant, or for which the applicant is an employee or agent;
- (h) The length of time which the applicant intends to do business in the city with the approximate dates;

(i) A statement as to whether or not the applicant or the person managing the business activities has been convicted within the last five years of any felony, gross misdemeanor or misdemeanor for violation of any state or federal statute or any local ordinance, other than traffic offenses;

(j) The applicant's driver's license number or other acceptable form of identification.

(k) If a vehicle is to be used, a description of the same together with license number or other means of identification;

(l) A photograph of the applicant, taken within 60 days immediately prior to the date of filing of the application, which picture shall be two inches by two inches showing the head and shoulders of the applicant in a clear and distinguishing manner;

(m) A list of the three most recent locations where the applicant has conducted business as a peddler, solicitor or transient merchant; and

(n) Transient merchants shall include the addresses of all places where the business is to be located along with written consent of the owners or occupants.

(3) *Fee.* All applications for a license under this chapter shall be accompanied by the fee established by the City Council annually in the city fee schedule.

(4) *Procedure.* Upon receipt of the completed application and payment of the license fee, the City Clerk must determine if the application is complete. An application is determined to be complete only if all required information is provided. If the City Clerk determines that the application is incomplete, the City Clerk must inform the applicant of the required or necessary information that is missing. If the application is complete, the City Clerk must order any investigation, including background checks, necessary to verify the information provided with the application. If there exists grounds for denying the license under paragraph D, the Clerk will notify the applicant in writing of the decision for denial and of the applicant's right to appeal the denial by requesting, within 20 days of receiving notice of rejection, a public hearing before the City Council. The City Council shall hear the appeal within 20 days of the date of the request.

(5) *License exemptions.*

(a) No license shall be required of any person going from house-to-house, door-to-door, business-to-business, street-to-street or other type of place-to-place when the activity is for the purpose of exercising that person's state or federal constitutional rights such as the freedom of speech, press, religion and the like, except that this exemption may be lost if the person's exercise of constitutional rights is merely incidental to a commercial activity.

(b) Professional fundraisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of this chapter.

D: LICENSE INELIGIBILITY.

The following shall be grounds for denying a license under this chapter:

(1) The failure of the applicant to truthfully provide any of the information requested by the city as part of the application, or the failure to sign the application or the failure to pay the required fee at the time of application;

(2) The conviction of the applicant within the past five years from the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner. Those violations shall include but not be limited to burglary, theft, larceny, swindling, fraud, unlawful business practices and any form of actual or threatened physical harm against another person;

(3) The revocation within the past five years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor or transient merchant; and

(4) The applicant is found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than three complaints against the applicant with the Better Business Bureau, the Attorney General's office or other similar business or consumer rights office or agency, within the preceding 12 months.

E: LICENSE SUSPENSION AND REVOCATION.

(1) *Generally.* Any license issued under this section may be suspended or revoked at the discretion of the City Council for violation of any of the following:

(a) Fraud, misrepresentation or incorrect statements on the application form;

(b) Fraud, misrepresentation or false statements made during the course of the licensed activity;

(c) Conviction of any offense for which granting of a license could have been denied under paragraph D; and

(d) Violation of any provision of this chapter.

(2) *Multiple persons under one license.* The suspension or revocation of any license issued for the purpose of authorizing multiple persons to conduct business as peddlers or transient merchants on behalf of the licensee shall serve as a suspension or revocation of each authorized person's authority to conduct business as a peddler or transient merchant on behalf of the licensee whose license is suspended or revoked.

(3) *Notice.* Prior to revoking or suspending any license issued under this chapter, the city shall provide the license holder with written notice of the alleged violations and inform the licensee of his or her right to a hearing on the alleged violation. Notice shall be delivered in person or by mail to the local address given on the application.

(4) *Public hearing.* Upon receiving the notice provided in paragraph E (3) of this section, the licensee shall have the right to request a public hearing. If no request for a hearing is received by the City Clerk within ten regular business days following the service of the notice, the city may proceed with the suspension or revocation. For the purpose of mailed notices, service shall be considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated time frame, a hearing shall be scheduled within 20 days from the date of the request. Within three regular business days of the hearing, the City Council shall notify the licensee of its decision.

(5) *Emergency.* If, in the discretion of the City Council, imminent harm to the health or safety of the public may occur because of the actions of a peddler or transient merchant licensed under this chapter, the City Council may immediately suspend the person's license and provide notice of the right to hold a subsequent public hearing as prescribed in paragraph D. (4) of this section.

F: LICENSE TRANSFERABILITY.

No license issued under this chapter shall be transferred to any person other than the person to whom the license was issued.

G: PROHIBITED ACTIVITIES.

(1) Sell or solicit before the hour of 9:00 a.m. or after one-half hour past sunset unless a previous appointment has been made.

(2) Enter or conduct business upon any premise where a sign or plaque is conspicuously posted stating in effect that no peddlers or solicitors are allowed. The signs shall have letters a minimum of one-half inch high.

(3) Occupy for the purpose of advertising and/or conducting business any area within a sight triangle, at any road intersection.

(4) Occupy as a transient merchant, solicitor or peddler, any public right-of-way or other public property for the purpose of advertising and/or conducting business.

(5) Obstruct the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk or other public right of way.

(6) Conduct business in a way as to create a threat to the health, safety and welfare of any individual or the general public.

(7) Call attention to business or items to be sold by means of blowing any horn or whistle, ringing any bell, crying out or by any other noise, so as to be unreasonably audible within an enclosed structure.

(8) Failing to provide proof of license and identification, when requested.

(9) Making false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor or transient merchant shall claim to have the endorsement of the city solely based on the city having issued a license or registration to that person.

(10) Remaining on the property of another when requested to leave or to otherwise conduct business in a manner a reasonable person would find obscene, threatening, intimidating or abusive.

H: PENALTIES.

Whoever does any act forbidden by this chapter or omits or fails to do any act required by this chapter shall be guilty of a misdemeanor and subject to all penalties provided for under Minnesota law.

This ordinance shall supersede and repeal all prior and consistent ordinances. This ordinance shall be effective upon passage and publication required by law.

DATED: 3-8-2016

Carol Markson

CLERK

Andrea Lauer

MAYOR

