

## ORDINANCE NO. 409

### AN ORDINANCE REGULATING THE CONDUCT OF PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS WITHIN THE CITY OF SPRINGFIELD, MINNESOTA

The City Council of the City of Springfield, Minnesota, does ordain:

That Sections 6.45-6.59 of the City Code shall be amended to read in their entirety as follows:

#### SECTION 6.45. DEFINITIONS.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

1. **NON-COMMERICAL DOOR-TO-DOOR ADVOCATE.** A person who goes door-to-door for the primary purpose of disseminating religious, political, social, or other ideological beliefs, campaigning for elected office or advocating for another political candidate or cause. For purpose of this ordinance, the term door-to-door advocate shall include door-to-door canvassing and pamphleteering intended for non-commercial purposes.
2. **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 movement, 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. For purpose of this ordinance, the term peddler shall have the same common meaning as the term hawker.
3. **PERSON.** Any natural individual, group, organization, corporation, partnership, or similar association.
4. **REGULAR BUSINESS DAY.** Any day during which the city hall is normally open for the purpose of conducting public business. Holidays defined by state law shall not be considered regular business days.
5. **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 movement, 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. For purposes of this ordinance, the term solicitor shall have the same meaning as the term canvasser.
6. **TRANSIENT MERCHANT.** A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the

purpose of exposing or displaying for sale, selling or attempting to sell, and delivering goods, wares, products, merchandise, or other personal property and who does not remain in any one location for more than fourteen (14) consecutive days.

#### **SECTION 6.46. EXCEPTIONS TO DEFINITIONS.**

For the purpose of this chapter, the terms *PEDDLER*, *SOLICITOR*, and *TRANSIENT MERCHANT* shall not apply to:

1. Non-commercial door-to-door advocates. Nothing within this ordinance shall be interpreted to prohibit or restrict non-commercial door-to-door advocates. Person engaging in non-commercial door-to-door advocacy shall not be required to register as a solicitor under Section 7.
2. Any person selling or attempting to sell at wholesale any goods, wares, products, merchandise, or other personal property to a retail seller of the items being sold by the wholesaler.
3. Any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products, such as baked goods or milk.
4. Any person making deliveries of perishable food and dairy products to the customers on his or her established delivery route.
5. Any person making deliveries of newspapers, newsletters, or other similar publications on an established customer delivery route, when attempting to establish a regular delivery route, or when publications are delivered to the community at large.
6. Any person conducting the type of sale commonly known as garage sales, rummage sales, or estate sales.
7. Any person participating in an organized multi-person bazaar or flea market.
8. Any person conducting an auction as a properly licensed auctioneer.
9. Any officer of the court conducting a court-ordered sale.
10. Members of local civic and service clubs or organizations, including the following: Boy Scouts, Girl Scouts, 4-H, Future Farmers of America, and similar organizations.
11. Students representing local school districts conducting projects or fundraising for such projects, trips, and other educational activities and organizations recognized by the local school districts.

Exemption from these definitions shall not, for the scope of this chapter, excuse any person from complying with any other applicable statutory provision or requirement provided by another city ordinance.

#### **SECTION 6.47. LICENSING; EXEMPTIONS.**

1. *City license required.* Except as otherwise provided for by this ordinance, no person shall conduct business within this jurisdiction as a peddler or a transient merchant without first obtaining a city license. Solicitors need not be licensed, but are required to register with the city pursuant to Section 7.
2. *Application.* An application for a city license to conduct business as a peddler or transient merchant shall be made at least fourteen (14) regular business days before the applicant desires to begin conducting a business operation within the city.

Application for a license shall be made on a form approved by the City Council and available from the office of the city clerk. All applications shall be signed by the applicant. All applications shall include the following information:

- A. The applicant's full legal name.
  - B. Any and all other names under which the applicant has or does conduct business, or to which the applicant will officially answer to.
  - C. A physical description of the applicant (hair color, eye color, height, weight, any distinguishing marks or features, and the like).
  - D. Full address of applicant's permanent residence.
  - E. Telephone number of applicant's permanent residence.
  - F. Full legal name of any and all business operations owned, managed, or operated by applicant, or for which the applicant is an employee or an agent.
  - G. Full address of applicant's regular place of business, if any exists.
  - H. Any and all business-related telephone numbers of the applicant, including cellular phones and facsimile (fax) machines.
  - I. The type of business for which the applicant is applying for a license.
  - J. Whether the applicant is applying for an annual or daily license.
  - K. The dates during which the applicant intends to conduct business. If the applicant is applying for a daily license, the number of days he or she will be conducting business within the city, with a maximum of fourteen (14) consecutive days.
  - L. Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up his or her business.
  - M. A statement as to whether or not the applicant has been convicted within the last five (5) years of any felony, gross misdemeanor or misdemeanor for violating any state or federal statute or any local ordinance, other than minor traffic offenses.
  - N. A list of the three (3) most recent locations where the applicant has conducted business as a peddler or transient merchant.
  - O. Proof of any required county license.
  - P. Written permission of the property owner or the property owner's agent for any location to be used by a transient merchant.
  - Q. A general description of the items to be sold or services to be provided.
  - R. Any and all additional information as may be deemed necessary by the City Council.
  - S. The applicant's driver's license number or other acceptable form of identification.
  - T. The license plate number, registration information, vehicle identification number (VIN) and physical description for any vehicle to be used in conjunction with the licensed business operation.
  - U. Any applicant who will have agents conducting business in the City on the applicant's behalf must provide the information necessary for background checks to be completed on each agent.
3. ***Fee.*** All applications for a license under this chapter shall be accompanied by the fee established in the city licensing fee schedule as it may be amended from time to time.
4. ***Procedure.*** Upon receipt of the application and payment of the license fee, the city clerk will, within two (2) regular business days, determine if the application is complete. An application will be considered complete 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, 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. The Springfield Police Department, Brown County Sheriff's office, and any other law enforcement agency are authorized to perform background checks. Within ten (10) regular business days of receiving a complete application the city clerk must issue the license unless grounds exist for denying the license application under Section 4, in which case the clerk must deny the request for a city peddler or transient merchant license. If the city clerk denies the license application, the applicant must be notified in writing of the decision, the reason for denial and the applicant's right to appeal the denial by requesting, within twenty (20) days of receiving notice of rejection, a public hearing before the City Council. The City Council shall hear the appeal with twenty (20) days of the date of the request for a hearing. The decision of the City Council following the public hearing can be appealed by petitioning the Minnesota Court of Appeals for a writ of certiorari.

5. ***Duration.*** An annual license granted under this ordinance shall be valid for one calendar year from the date of issuance. All other licenses granted to peddlers and transient merchants under this ordinance shall be valid only during the time period indicated on the license.

#### **SECTION 6.48. LICENSE EXEMPTIONS.**

1. No license shall be required for any person to sell or attempt to sell, or to take or attempt to take orders for, any product grown, produced, cultivated, or raised by the seller thereof, or a person related to the seller.
2. No separate, individual licenses shall be required for agents of a licensed group, corporation, or business, so long as the agents provide completed applications and the applicable agent fees were paid.
3. No license shall be required for any person going from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement for the primary purpose of exercising that person's state or federal constitutional rights such as the freedom of speech, freedom of the press, freedom of religion, and the like. This exemption will not apply if the person's exercise of constitutional rights is merely incidental to what would properly be considered a commercial activity.

#### **SECTION 6.49. BONDS.**

1. ***Bond for Licensee.*** Before a license, as provided by this Section shall be issued, such applicant shall file with the City Clerk a bond running to the City as follows:
  - A. For a person engaging in business as a transient merchant, a bond in the sum of \$1,000.00 secured by either the applicant as principal and two sureties upon whom service of process may be made in the State of Minnesota or by the applicant, as principal and a corporate surety doing business in the State of Minnesota.
  - B. A person engaged in business as a peddler, a bond in the sum of \$250.00 secured by either the applicant, as principal and two sureties upon whom service of

process may be made in the State of Minnesota or by the applicant, as principal and a corporate surety doing business in the State of Minnesota.

- C. All such bonds shall be approved by the City Attorney, and conditioned that said applicant shall comply fully with all of the provisions of the City Code and the statutes of the State of Minnesota, regulating and concerning the sale of goods, wares, and merchandise, and will pay all judgments rendered against said applicant for any violation of said City Code provisions or statutes, or any of them together with all judgments and costs that may be recovered against him by any person or persons for damage growing out of any misrepresentation or deception practiced by any person transacting such business with such applicant, whether such said misrepresentation or deception was made or practiced by the owner or by their servants, agents or employees, either at the time of making the sale or through any advertisement of any character whatsoever, printed or circulated with reference to the goods, wares and merchandise sold or any part thereof. Any action on the bond may be brought in the name of the City to the use of aggrieved person.

#### **SECTION 6.50. AGENCY/PROCESS**

1. ***Service of Process.*** Before any license for a transient merchant or peddler, as herein provided, shall be issued, such applicant shall file with the City Clerk an instrument nominating and appointing the City Clerk his true and lawful agent with full power and authority to acknowledge service of notice of process for, and on behalf of, the said applicant in respect to any matters connected with or arising out of the business transacted under said license and the bond given as required by this Section, or for the performance of the conditions of said bond or for any breach thereof. Said instrument shall also contain recitals to the effect that said applicant for said license consents and agrees that service of any notices or process may be made upon said agent, and when so made shall be taken and held to be as valid as if personally served on the person or persons applying for said license under this Section, according to the laws of the State or any other state and waiving all claims or right of error by reason of such acknowledgment of service or manner of service. Immediately upon service of process upon the City Clerk, as herein provided, the City Clerk shall send to the said licensee at his last known address, by registered mail, a copy of said notice.

#### **SECTION 6.51. LICENSE INELIGIBILITY.**

The following shall be grounds for denying a peddler or transient merchant license:

1. The failure of an applicant to obtain and demonstrate proof of having obtained any required county license.
2. The failure of an applicant to truthfully provide any information requested by the city as part of the application process.
3. The failure of an applicant to sign the license application.
4. The failure of an applicant to pay the required fee at the time of application.
5. A conviction within the past five (5) years of the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely

- reflects upon the person's ability to conduct the business for which the license is being sought in a professional, honest and legal manner. Such violations shall include, but are not limited to, burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.
6. The revocation within the past five (5) years of any license issued to an applicant for the purpose of conducting business as a peddler, solicitor, or transient merchant.
  7. When an applicant has a bad business reputation. Evidence of a bad business reputation shall include, but is not limited to, the existence of more than three (3) complaints against an applicant with the Better Business Bureau, the Office of the Minnesota Attorney General or other state attorney general's office, or other similar business or consumer rights office or agency, within the preceding twelve (12) months, or three (3) complaints filed with the city against an applicant within the preceding five (5) years.

## **SECTION 6.52. 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. Subsequent knowledge by the city of fraud, misrepresentation or incorrect statements provided by an applicant on the application form.
  - B. Fraud, misrepresentation or false statements made during the course of the licensed activity.
  - C. Subsequent conviction of any offense to which the granting of the license could have been denied under Section 4.
  - D. Engaging in any prohibited activity as provided under Section 8 of this ordinance.
  - E. Violation of any other provision of this ordinance.
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 a 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 permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.
4. **Public Hearing.** Upon receiving the notice provided in part (C) 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 (10) days following the service of the notice, the city may proceed with the suspension or revocation. For the purpose of a mailed notice, 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 twenty (20) days from the date of the request for the public hearing. Within three (3) 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 ordinance, 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 part (C) of this section.
6. ***Appeal.*** Any person whose license is suspended or revoked under this section shall have the right to appeal that decision in court.

#### **SECTION 6.53. LICENSE TRANSFERABILITY.**

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

#### **SECTION 6.54. REGISTRATION.**

1. All solicitors and any person exempt from the licensing requirements of this ordinance under Section 3 shall be required to register with the city prior to engaging in those activities. Registration shall be made on the same form required for a license application, but no fee shall be required. Immediately upon completion of the registration form, the city clerk shall issue to the registrant a certificate of registration as proof of the registration. Certificates of registration shall be non-transferrable.
2. Individuals that will be engaging in non-commercial door-to-door advocacy shall not be required to register.

#### **SECTION 6.55. PROHIBITED ACTIVITIES.**

No peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or other person engaged in other similar activities shall conduct business in any of the following manner:

1. Calling attention to his or her business or the 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.
2. Obstructing the free flow of traffic, either vehicular or pedestrian, on any street, sidewalk, alleyway, or other public right-of-way.
3. Conducting business in a way as to create a threat to the health, safety, and welfare of any specific individual or the general public.
4. Conducting business before 8 a.m. or after 8 p.m.
5. Failing to provide proof of license, or registration, and identification when requested.
6. Using the license or registration of another person.
7. Alleging false or misleading statements about the products or services 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 certificate of registration to that person.
8. Remaining on the property of another when requested to leave.
9. Otherwise operating their business in any manner that a reasonable person would find obscene, threatening, intimidating or abusive.

**SECTION 6.56. EXCLUSION BY PLACARD.**

Unless specifically invited by the property owner or tenant, no peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or other person engaged in other similar activities shall enter onto the property of another for the purpose of conducting business as a peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or similar activity when the property is marked with a sign or placard:

1. At least four inches long.
2. At least four inches wide.
3. With print of at least 48 point in size.
4. Stating “No Peddlers, Solicitors or Transient Merchants,” “Peddlers, Solicitors, and Transient Merchants Prohibited,” or other comparable statement.

No person other than the property owner or tenant shall remove, deface, or otherwise tamper with any sign or placard under this section.

**SECTION 6.57. PENALTY.**

Any individual found in violation of any provision of this ordinance, shall be guilty of a misdemeanor.

**SECTION 6.58. SEVERABILITY.**

If any provision of this ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

**SECTION 6.59. EFFECTIVE DATE.**

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, Subd. 4, as it may be amended from time to time, which meets the requirements of Minnesota Statute Section 331A.01, Subd. 10, as it may be amended from time to time.

Passed by the Council this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**Attested:**

\_\_\_\_\_

**Mayor**

\_\_\_\_\_

**City Clerk**