

ORDINANCE NO. 83

AN ORDINANCE REGULATING THE CONDUCT OF PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS WITHIN THE CITY OF BROWNTON, MINNESOTA.

The City Council of Brownton, Minnesota ordains:

SECTION 1. 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.

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. For purpose of this ordinance, the term door-to-door advocate shall fall under the term solicitor and include door-to-door canvassing and pamphleteering intended for non-commercial purposes.

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 for 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.

PERSON. Any natural individual, group, organization, corporation, partnership, or similar association.

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.

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.

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 seven (7) consecutive days.

SECTION 2. EXCEPTIONS TO DEFINITIONS.

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

(A) 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.

(B) 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.

(C) 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.

(D) Any person making deliveries of perishable food and dairy products to the customers on his or her established delivery route.

(E) 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.

(F) Any person conducting the type of sale commonly known as garage sales, rummage sales, or estate sales.

(G) Any person participating in an organized multi-person bazaar or flea market.

(H) Any person conducting an auction as a properly licensed auctioneer.

(I) Any officer of the court conducting a court-ordered sale.

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.

(J) Minors under the age of eighteen (18), provided such activities are for the benefit of a non-profit athletic, religious, social or educational organization to which such minors belong, and provided further, that the use of such minor in conducting such activity is not for the sole purpose of obtaining this exemption.

(K) A concession stand set up and operated during a community celebration or public event sponsored by any non-profit athletic, religious, social or educational organization, provided such concessions are conducted only during the celebration or public event. Such concession may only be operated upon the specific premises upon which the community celebration or public event is being conducted.

(L) A permanent concession stand located within any public park when the use of the concession stand has been specifically authorized by the City Council...

(M) Sales conducted by the Brownton Volunteer Firemen's Relief Association or any auxiliary organization thereof for the exclusive benefit of the Fire Department

SECTION 3. LICENSING; EXEMPTIONS.

(A) ***County license required.*** No person shall conduct business as a peddler, solicitor, or transient merchant within the city limits without first having obtained the appropriate license from the county as may be required by Minnesota Statutes Chapter 329 as it may be amended from time to time, if the county issues a license for the activity.

(B) ***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.

(C) **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:

- (1) The applicant's full legal name.
- (2) Any and all other names under which the applicant has or does conduct business, or to which the applicant will officially answer to.
- (3) A physical description of the applicant (hair color, eye color, height, weight, any distinguishing marks or features, and the like).
- (4) Full address of applicant's permanent residence.
- (5) Telephone number of applicant's permanent residence.
- (6) 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.
- (7) Full address of applicant's regular place of business, if any exists.
- (8) Any and all business-related telephone numbers of the applicant, including cellular phones and facsimile (fax) machines.
- (9) The type of business for which the applicant is applying for a license.
- (10) The dates during which the applicant intends to conduct business. The number of days he or she will be conducting business within the city, with a maximum of seven (7) consecutive days.
- (11) 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.
- (12) A statement as to whether or not the applicant has been convicted with 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.
- (13) A list of the three (3) most recent locations where the applicant has conducted business as a peddler or transient merchant.
- (14) Proof of any required county license.
- (15) Written permission of the property owner or the property owner's agent for any location to be used by a transient merchant.
- (16) A general description of the items to be sold or services to be provided.
- (17) Any and all additional information as may be deemed necessary by the City Council.
- (18) The applicant's driver's license number or other acceptable form of identification.
- (19) 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.

(D) **Fee.** All applications for a peddler or transient merchants 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. There is not a fee for a solicitor registration.

(E) **Procedure.** Upon receipt of the application and payment of the license fee (for peddler or transient merchant only), the clerk will, within ten (10) regular business days,

determine if the application is complete. An application will be considered complete if all required information is provided. If the clerk determines that the application is incomplete, the clerk must inform the applicant of the required, necessary information that is missing. Within ten (10) regular business days of receiving a complete application the 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 solicitor, peddler or transient merchant license. If the 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 within 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.

(F) *Duration*. All licenses granted to peddlers and transient merchants under this ordinance shall be valid only during the time period indicated on the license.

(G) *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 on any farm.

(2) 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 4. LICENSE INELIGIBILITY.

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

(A) The failure of an applicant to obtain and demonstrate proof of having obtained any required county license.

(B) The failure of an applicant to truthfully provide any information requested by the city as part of the application process.

(C) The failure of an applicant to sign the license application.

(D) The failure of an applicant to pay the required fee at the time of application.

(E) A conviction with 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.

(F) The revocation with 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.

(G) 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, with the preceding twelve (12) months, or three (3) complaints filed with the city against an applicant within the preceding five (5) years.

SECTION 5. LICENSE SUSPENSION AND REVOCATION

(A) **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:

- (1) Subsequent knowledge by the city of fraud, misrepresentation or incorrect statements provided by an applicant on the application form.
- (2) Fraud, misrepresentation or false statements made during the course of the licensed activity.
- (3) Subsequent conviction of any offense to which the granting of the license could have been denied under Section 4.
- (4) Engaging in any prohibited activity as provided under Section 8 of this ordinance.
- (5) Violation of any other provision of this ordinance.

(B) **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.

(C) **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.

(D) **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 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.

(E) **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.

(F) **Appeal.** Any person whose license is suspended or revoked under this section shall have the right to appeal that decision in court.

SECTION 6. 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 7. REGISTRATION.

(A) 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 clerk shall issue to the registrant a certificate of registration as proof of the registration. Certificates of registration shall be non-transferrable.

(B) Individuals that will be engaging in non-commercial door-to-door advocacy shall not be required to register.

SECTION 8. 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:

(A) 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.

(B) Obstructing the free flow of traffic, either vehicular or pedestrian, on any street, sidewalk, alleyway, or other public right-of-way.

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

(D) Conducting business before 8 a.m. or after 9 p.m.

(E) Failing to provide proof of license, or registration, and identification when requested.

(F) Using the license or registration of another person.

(G) 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.

(H) Remaining on the property of another when requested to leave.

(I) Otherwise operating their business in any manner that a reasonable person would find obscene, threatening, intimidating or abusive.

SECTION 9. 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 10. PENALTY.

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

SECTION 11. 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 12. 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 City Council of _____, Minnesota this _____ day of Month, Year.

Mayor

Attested:

City Clerk

Amended by the City Council this 6th day of November, 2019