

CHAPTER 112: PEDDLERS AND SOLICITORS

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§ 112.01 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-Commercial 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, 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 personnel property that the person is carrying or otherwise transporting. For the purposes of this ordinance, 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 term shall include each member, officer, partner, associate, agent or employee.

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, 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." The definition of **Solicitor** does not include situations wherein the homeowner expressly consents to the presence of the person selling items prior to the person selling the items entering the property. (For example, in-home parties of Tupperware, Southern Living at Home, Longaberger Baskets, and the like.)

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. Food trucks/carts are governed by the City's Zoning Code, Chapter 156, Section 156.087.

§ 112.02 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 112.07.

(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 excuse any person from complying with any other applicable statutory provision or requirement provided by another city ordinance.

§ 112.03 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 required by M.S. 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 chapter, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the city. Solicitors need not be licensed, but are still required to register pursuant to § 112.07.

(C) *Application.* Application for a city license to conduct business as a peddler or transient merchant shall be made at least 14 regular business days before the applicant desires to begin conducting business. Application for a license shall be made on a form approved by the City Council and available from the office of the Chief of Police. All applications shall be signed by the applicant. All applications shall include the following information:

(1) Applicant's full legal name.

(2) All other names under which the applicant conducts business or to which applicant officially answers.

(3) A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and 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 agent.

(7) Full address of applicant's regular place of business (if any).

(8) Any and all business related telephone numbers of the applicant.

(9) The type of business for which the applicant is applying for a license.

(10) Whether the applicant is applying for an annual or daily license.

(11) The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the city (maximum 14 consecutive days).

(12) 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 business.

(13) A statement as to whether or not the applicant 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.

(14) A list of the three most recent locations where the applicant has conducted business as a peddler or transient merchant.

(15) Proof of any requested county license.

(16) Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant.

(17) A general description of the items to be sold or services to be provided.

(18) All additional information deemed necessary by the City Council.

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

(20) The license plate number, registration information and vehicle identification number for any vehicle to be used in conjunction with the licensed business and a description of the vehicle.

(D) *Fee.* All applications for a license under this chapter shall be accompanied by the fee established by ordinance.

(E) *Procedure.* Upon receipt of the completed application and payment of the license fee, the Chief of Police, within two regular business days, must determine if the application is complete. An application is determined to be complete only if all required information is provided. If the Chief of Police determines that the application is incomplete, the Chief of Police must inform the applicant of the required necessary information that is missing. If the application is complete, the Chief of Police must order any investigation, including background checks, necessary to verify the information provided with the application.

Within ten regular business days of receiving a complete application the Chief of Police must issue the license unless there exist grounds for denying the license under § 112.04, in which case the Chief of Police must deny the license. If the Chief of Police denies the license, the applicant must be notified in writing of the decision, the reason 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. 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.* An annual license granted under this chapter shall be valid for one calendar year from the date of issue. All other licenses granted under this chapter 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 of any person going from house-to-house, door-to-door, business-to-business, street-to-street, or 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 a commercial activity.

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

§ 112.04 LICENSE INELIGIBILITY

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

(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.

§ 112.05 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) Fraud, misrepresentation or incorrect statements on the application form.
- (2) Fraud, misrepresentation or false statements made during the course of the licensed activity.
- (3) Conviction of any offense for which granting of a license could have been denied under § 112.04.
- (4) Violation of any provision of this chapter.

(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 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 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 division (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 Administrator or Chief of Police 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.

(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 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 division (C) of this section.

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

§ 112.06 LICENSE TRANSFERABILITY

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

§ 112.07 REGISTRATION

All solicitors, and any person exempt from the licensing requirements of this chapter under § 112.03, shall be required to register with the city. Persons engaging in door-to-door advocacy shall not be required to register. 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 Chief of Police shall issue to the registrant a Certificate of Registration as proof of the registration. Certificates of Registration shall be non-transferable.

§ 112.08 PROHIBITED ACTIVITIES

No peddler, solicitor or transient merchant shall conduct business in any of the following manners:

- (A) Calling attention to his or her 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.
- (B) Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk 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 individual or the general public.
- (D) Conducting business before 7:00 a.m. or after 9:00 p.m.
- (E) Failing to provide proof of license or registration, and identification, when requested; or using the license or registration of another person.

(F) Making any 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 certificate of registration to that person.

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

§ 112.09 EXCLUSION BY PLACARD

No peddler, solicitor or transient merchant, unless invited to do so by the property owner or tenant, shall enter the property of another for the purpose of conducting business as a peddler, solicitor or transient merchant when the property is marked with a sign or placard at least four inches long and four inches wide with print of at least 48 point in size stating "No Peddlers, Solicitors or Transient Merchants," or "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.

§ 112.10 PENALTY

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