

ORDINANCE 00-04

I. Solicitors and Peddlers: An ordinance relating to peddlers, solicitors, and transient merchants and exercising the City's authority to regulate the nuisance created by such business practices under the City's general police powers and as specifically authorized by Minnesota Statutes Sections 329.06, 329.15, and 347.02.

II. Definitions and Interpretation. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and the neuter, and vice-versa. The term "shall" means mandatory and the term "may" is permissive. The following terms shall have the definitions given to them:

A. Peddler. The term "peddler" shall mean 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 to 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.

B. Solicitor. The term "solicitor" shall mean 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 solicitor shall mean the same as the term canvasser.

C. Transient Merchant. The term "transient merchant" shall mean 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 or intend to remain in any one location for more than seven (7) consecutive days.

- III. **Exceptions to Definitions.** For the purpose of the requirements of this ordinance, the terms “peddler,” “solicitor,” and “transient merchant” shall not apply to any person selling or attempting to sell at wholesale and goods, wares, products, merchandise, or other personal property, to a retailer of the item(s) being sold by the wholesaler. The terms also shall not apply to 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 deliver of perishable food and dairy products such as baked goods and milk, nor shall they apply to any person making deliveries of perishable food and dairy products to the customers on his or her established regular delivery route. In addition, persons conducting the type of sales commonly known as garage sales, rummage sales, or estate sales, as well as those personal participating in an organized multi-person bazaar or flea market, shall be exempt from the definitions of peddlers, solicitors, and transient merchants, as shall be anyone conducting an auction as a properly licensed auctioneer, or any officer of the court conducting a court ordered sale. Exemption from the definitions for the scope of this ordinance shall not excuse any person from complying with any other applicable statutory provision or local ordinance. (Minnesota Courts have held that the above exceptions are not nuisances intended to be regulated by this type of ordinance. *See e.g. Excelsior Baking Co. v. City of Northfield*, 77N.W.2d 188 (Minn. 1956) (delivery routes); *City of Briggs*, 88 N.W.2d 984 (relating to wholesalers)).
- IV. **City License Required.** Except as otherwise provided for by this ordinance, no person shall conduct business within the City limits of this municipality, as either a peddler or a transient merchant without first having obtained a license therefore in compliance with the provisions of this Ordinance. (Minnesota case law does not allow solicitors to be licensed. *See e.g. City of Waseca V. Braun*, 288 N.W. 229 (Minn. 19.9). Solicitors are still required to be licensed pursuant to section XII of this Ordinance).
- V. **Application.** 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 business. 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. Applicant’s full legal name;
 - b. All other names under which the applicant conducts business or to which Applicant officially answers;
 - c. Names and descriptions of all the persons proposed to be used in this City during the period for which application is made;
 - 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 operation(s) owned, managed, or Operated by applicant, or for which the applicant is an employee or agent;

- g. Full address of applicant's regular place of business (if any);
- h. Any and all business related telephone numbers (s) of the applicant;
- i. A brief description of the nature of the business and the goods to be sold;
- j. License number or numbers of vehicles transporting applicants;
- k. The dates during which the applicant intends to conduct business;
- l. Any and all address(es) and telephone number(s) where the applicant can be reached while conducting business within the City, including the location where a transient merchant intends to set up business;
- m. A statement as to whether or not the applicant has been convicted within the last five years of a felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute or any local ordinance, other than 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 property to be used by a transient merchant; and
- q. All additional information deemed necessary by the City Council.

VI. Fee

- A.** All applications for a license under this ordinance shall be accompanied by the fee established in the City's fee schedule as adopted from time to time by the ordinance passed by the Council.
- B.** All annual licenses shall be issued so as to expire December 31st of each year.
- C.** Where the license application is for the primary benefit of bonafide charities or non-profit ventures, the Council may, at its option, waive the requirements of this Ordinance as to fees.

VII. Procedure. Upon receipt of the completed application and payment of the license fee, the City Clerk shall forward the application to the Chief of Police within two (2) regular business days of receipt. An application shall be determined to be complete only if all required information is provided. The City Clerk, within two regular business days of receipt, shall determine if the application is complete. If the clerk determines that the application is incomplete, the clerk shall inform the applicant of the required necessary information which is missing. The Chief of Police shall review the application and order any investigation, including background checks, necessary to verify the information provided with the application and for the protection of the public good. The review shall not exceed five (5) regular business days of receipt from the city clerk.

A. If after result of such investigation, the character and business responsibility of the applicant are found satisfactory, the Chief of Police shall endorse on the application his/her approval, and return said application to the Office of the City Clerk, who shall, upon payment of the license fee, deliver to the applicant the license. Such license shall contain the signature and seal of the issuing officer, show the amount paid, the date of issuance and the length of time the same shall be operative. The City Clerk shall keep a permanent record of all licenses issued.

B. If after result of such investigation, the character and business responsibility of the applicant is found to be unsatisfactory, the Chief of Police shall endorse on such application his/her disapproval and reasons for the same. The applicant shall be notified in writing of the reason for denial, and his or her right to appeal the denial by requesting, within ten (10) days of receiving the denial a public hearing before the City Council within twenty (20) days of the date of request.

C. Any applicant who is issued a denial under paragraph B of section VII, may be issued a temporary permit by furnishing a bond as provided in Section VIII.

VIII. **Bonds.** Where an applicant for license has been denied under the provisions of Section VII of this ordinance, the applicant may file with the City Clerk a corporate surety bond, running to the City in the amount of \$10,000.00 with surety acceptable to and approved by the City Attorney, conditioned that the applicant shall comply fully with all the provisions of the ordinances of the City of Sartell and the statutes of Minnesota regulating the business of solicitors and peddlers and guaranteeing to any citizen of this municipality that all money paid as a down payment will be accounted for and applied according to the representations of the solicitor and further guaranteeing to any citizen of Sartell doing business with said solicitor, that the property purchased will be delivered according to the representations of said solicitor, upon the filing of which bond and payment of the fees provided, a license may be issued. Action on said bond may be brought in the name of the City to use or benefit of the aggrieved person.

IX. **License Exemption.** 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. 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 such activity is for the purpose of exercising that person's State or Federal Constitution rights (i.e., freedom of speech, press, religion, etc.) except that this exemption may be lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity.

- X. **Ineligibility for License.** The following shall be grounds for denying a license under this ordinance.
- A. The failure of the applicant to obtain and show proof of having obtained any required County license.
 - B. 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.
 - C. 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 or that will not adversely affect the health, safety, and welfare of the residents of the city. Such 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.
 - D. 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.
 - E. The applicant is determined to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than two (2) complaint(s) against the applicant with the Better Business Bureau, the Attorney General's Office, any other similar business or consumer rights office or agency, or the City of Sartell, within the preceding twelve (12) months, or five (5) such complaints filed against the applicant within the preceding five (5) years.

- XI. **Suspension and Revocation.** Any license issued under this section may be suspended or revoked at the discretion of the Chief of Police 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 Section X of this Ordinance.
- D. Violation of any provision of this Ordinance.

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 such authorized person's authority to conduct business as a peddler or transient merchant on behalf of the licensee whose license is suspended or revoked.

- XII. **Transferability.** No license issued under this ordinance shall be transferred to any person other than the person to whom the license was issued.
- XIII. **Registration.** All solicitors, and any person exempt from the licensing requirement of this ordinance under Section VIII shall be required to register with the City. Registration shall be made on the same form required of 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-transferable.
- XIV. **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. Obstruction the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk, or other public right-of-way.
 - C. Conducting business in such a way as to create a threat to the health, safety, and welfare of any individual or the general public.
 - D. Conducting business before eight o'clock in the morning (8:00 a.m.), or after eight o'clock at night (8:00 p.m.)
 - E. Failing to provide proof of license 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.
- XV. **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 three and three-quarter (3-3/4) inches long and three and three-quarter (3-3/4) inches wide with print of at least 48 point in size stating "No Peddlers, solicitors, or transient merchant," 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.

XVI. **Violations and Penalties.** Any person who violates any provision of this ordinance shall be guilty of a misdemeanor and upon conviction of any violation shall be subject to a fine not to exceed seven hundred dollars (\$700) or a jail sentence not to exceed ninety (90) days, or both, plus the cost of prosecution. Each day a violation exists shall constitute a separate violation for the purposes of this section.

XVII. **Separability.** Should any section, clause, or portion of this ordinance be found invalid, unenforceable, or unconstitutional by a Court of competent jurisdiction, such finding shall not apply to any other section, clause, or portion of this ordinance, unless the court's findings specifically provides otherwise.

PASSED BY THE SARTELL CITY COUNCIL THIS 13TH DAY OF NOVEMBER, 2000

MAYOR

ATTEST:

City Administrator

SEAL

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