

CITY OF AURORA

ORDINANCE NO. 279

AN ORDINANCE AMENDING ALL OTHERS PERTAINING TO TRANSIENT MERCHANTS IN THE CITY OF AURORA, SOUTH DAKOTA

BE IT ORDAINED BY THE CITY OF AURORA, SOUTH DAKOTA:

ARTICLE 1: ORDINANCE REGULATING SOLICITORS AND PEDDLERS

SECTION 1-0: PURPOSE

This is an ordinance to protect against criminal activity, including fraud and burglary, minimize the unwelcome disturbance of citizens and the disruption of privacy, and to otherwise preserve the public health, safety and welfare by regulating, controlling and licensing door-to-door solicitors and peddlers.

SECTION 1-1: DEFINITIONS

The following words, terms and phrases, when used in this Ordinance, will have the meaning provided in this Section, except where the context clearly indicates a different meaning.

- (a) "Canvasser" means any person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of (1) attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue or candidate, even if incidental to such purpose the canvasser accepts the donation of money for or against such cause, (2) distributing a handbill or flyer advertising a non-commercial event or service, or (3) solicitations, sales or distributions made by charitable, civic, educational or religious organizations.
- (b) "Charitable" means and includes the words patriotic, philanthropic, social service, health, welfare, benevolent, educational, civic, cultural or fraternal, either actual or purported.
- (c) "Contributions" means and includes the words money and property or any donations under the guise of a loan of money or property.
- (d) "Peddler" means any person who goes upon the premises of any private residence in the City, not having been invited by the occupant thereof, carrying or transporting goods, wares, merchandise or personal property of any nature and offering the same for sale. This definition also includes any person who solicits orders and as a separate transaction makes deliveries to purchasers as part of the scheme to evade the provisions of this Ordinance. Peddler does NOT include a person who distributes handbills or flyers for a commercial purpose, advertising an event, activity, good or service that is offered to a resident for purchase at a location away from his/her residence or at a time different from the time of visit.
- (e) "Peddling" includes all activities ordinarily performed by a peddler as indicated under paragraph (d) of this Section.
- (f) "Person" means a natural person or any firm, corporation, association, club, society or other organization.

- (g) "Solicitor" means any person who goes upon the premises of any private residence in the City, not having been invited by the occupant thereof, for the purpose of taking or attempting to take orders for the sale of goods, merchandise, wares or other personal property of any nature for future delivery or for services to be performed in the future. This definition also includes any person who, without invitation, goes upon private property to request contribution of funds or anything of value, or sell goods or services for political, charitable, religious or other non-commercial purposes.
- (h) "Solicitation" includes all activities ordinarily performed by a solicitor as indicated under paragraph (g) of this Section.

SECTION 1-2: PERMIT REQUIREMENTS AND EXEMPTIONS

It will be unlawful for any person eighteen (18) years of age or older to engage in peddling or solicitation activities within the City of Aurora without first obtaining a permit issued by the City; provided, however, that the following are exempted from the provisions of this Section.

- (a) Any solicitation made upon premises owned or occupies by an organization upon whose behalf the solicitation is made.
- (b) Any communication by an organization soliciting contributions solely from persons who are members of the organization at the time of such solicitation.
- (c) Any solicitation in the form of a collection at a regular meeting, assembly or service of a charitable person; or
- (d) Any solicitation for the relief of any individual specified by name at the time of the solicitation where the solicitor represents in each case that the entire amount collected will be turned over to the named beneficiary.
- (e) A "canvasser" as defined in Section 1-1.

SECTION 1-3: PERMIT FOR SPONSORING JUVENILE PEDDLERS

- (a) No person under the age of eighteen (18) will be permitted to engage in peddling except as provided in this Section.
- (b) A permit must be obtained by a sponsoring person, company or organization for the conduct of any peddling or solicitation activities involving, in whole or in part, a sales force of one (1) or more persons under eighteen (18) years of age.
- (c) The sponsor will be responsible for supervising and controlling the conduct of all persons, including juveniles who are peddling under the sponsor's permit.

SECTION 1-4: PERMIT APPLICATION

Every person subject to the provisions of this Ordinance will file with the City of Aurora an application in writing on a form to be furnished by the City, which will provide the following information:

- (a) Proof of age, address and identification of the applicant, to be provided through the applicant driver's license, articles of incorporation (for sponsors), or other legally recognized form of identification.
- (b) A brief description of the business or activity to be conducted.
- (c) The hours and location for which the right to peddle or solicit is desired.
- (d) If employed, the name, address and telephone number of the employer; or if acting as an agent, the name, address and telephone number of the principal who is being represented, with credentials in written form establishing the

relationship and the authority of the employee or agent to act for the employer or principal, as the case may be.

- (e) A statement as to whether or not the applicant has been convicted of a felony or misdemeanor, the name of the offense or violation, the penalty or punishment imposed, and the date when and place where such offense occurred.
- (f) Proof of possession of any license or permit which, under federal, state or local laws or regulations, the applicant is required to have in order to conduct the proposed business, including a South Dakota Sales Tax License, or which, under any such law or regulation, would exempt the applicant from the licensing requirements of this Ordinance.

SECTION 1-5: FEES

At the time the application is filed with the City, the applicant will pay a fee to cover the cost to the City for processing the application and investigating the facts stated therein. The permit fee shall be \$100.00 dollars for each solicitor or peddler.

SECTION 1-6: APPLICATION REVIEW AND PERMIT ISSUE

- (a) Upon receipt of an application, the City Finance Officer, or an authorized representative of the City Finance Officer will review the application as deemed necessary to ensure the protection of the public health, safety and general welfare.
- (b) If the City Finance Officer finds the application to be satisfactory, the City Finance Officer will endorse their approval on the application and will, upon payment of the prescribed fee, deliver the required permit to the applicant.
- (c) The permit will show the name and address of the permittee, the kind of goods or services to be sold or delivered, the date of issuance, and the length of time that the permit will be in effect.
- (d) A record of all permits issued will be maintained by the City of Aurora for a period of five (5) years.

SECTION 1-7: DENIAL OF PERMIT

- (a) Upon the City Finance Officer's review of the application, the Finance Officer may refuse to issue a permit to the applicant under this Ordinance for any of the following reasons:
 - (1) The location and time of solicitation or peddling would endanger the safety and welfare of the solicitors, peddlers or their customers.
 - (2) An investigation reveals that the applicant falsified information on the application.
 - (3) The applicant has been convicted of a felony or misdemeanor violation involving a sex offense, trafficking in controlled substances, or any violent acts against persons or property, such conviction being entered within the five (5) years preceding the date of application.
 - (4) The applicant is a person against whom a judgment based upon, or conviction for, fraud, deceit or misrepresentation has

been entered within the five (5) years immediately preceding the date of application.

- (5) There is no proof as to the authority of the applicant to serve as an agent to the principal; or
- (6) The applicant has been denied a permit under this Ordinance within the immediate past year, unless the applicant can and does show to the satisfaction of the City Finance Officer that the reasons for such earlier denial no longer exist.

- (b) The City Finance Officer's disapproval and the reasons for disapproval must be noted on the application, and the applicant will be notified that their application is disapproved and that no permit will be issued. Notice will be mailed to the applicant at the address shown on the application form, or at the applicant's last known address.

SECTION 1-8: PERMIT EXPIRATION

All permits issued under the provisions of this Ordinance will expire one (1) month from the date of issuance, unless an earlier expiration date is noted on the permit.

SECTION 1-9: PERMIT EXHIBITION

Every person required to obtain a permit under the provisions of this Ordinance will exhibit the permit issued by the City of Aurora when requested to do so by any prospective customer or City employee.

SECTION 1-10: TRANSFER PROHIBITED

It is unlawful for any person other than the permittee to use any permit issued under the provisions of this Ordinance.

SECTION 1-11: ENTRY UPON PREMISES UNLAWFUL

It is unlawful for any person, whether licensed or unlicensed, while conducting the business of a canvasser, peddler, or solicitor, to enter upon any residential premises in the City of Aurora where the owner, occupant or person legally in charge of the premises has:

- (a) Posted, at the entry to the premises, or at the entry to the principal building on the premises, a sign bearing the words "No Peddlers", "No Solicitors", or words of similar nature; or
- (b) Filed a "No Solicitation Registration Form" with the City of Aurora on a form furnished by the City for that purpose. The City will maintain a "No Solicitation" list of those persons who wish to restrict solicitation on their property by canvassers, peddlers, and solicitors. The "No Solicitation" list will be a public document and a copy of the list will be provided to each recipient of a permit to engage in solicitation.

SECTION 1-12: HOURS OF SOLICITATION

No person, while conducting the activities of a peddler or solicitor, whether licensed or unlicensed, will enter upon any private property, knock on doors or otherwise disturb persons in their residences between the hours of 9:00 PM and 9:00 AM.

SECTION 1-13: PERMIT REVOCATION

Any permit issued under this Ordinance may be revoked or suspended, by the City Finance Officer, after notice and hearing for any of the following reasons:

- (a) Fraud, misrepresentation or false statement contained in the application for a permit.
- (b) Fraud, misrepresentation or false statement made by the permittee in the course of conducting solicitation or peddling activities.
- (c) Conducting peddling or solicitation activities contrary to the provisions contained in the permit.
- (d) Conducting peddling or solicitation activities in such a manner as to create a public nuisance constitute a breach of the peace or endanger the health, safety or general welfare of the public.

SECTION 1-14: NOTICE AND HEARING

Notice of a hearing for revocation of a permit issued under this Ordinance will be provided in writing and will set forth specifically the grounds for the proposed revocation and the time and place of the hearing. Notice will be mailed, postage prepaid, to the permittee at the address shown on the permit application or at the last known address of the permittee.

SECTION 1-15: APPEALS

- (a) Any person aggrieved by the action or decision of the City Finance Officer to deny, suspend or revoke a permit applied for under the provisions of this Ordinance will have the right to appeal such action or decision to the City Council within (15) days after the notice of the action or decision has been mailed to the person's address as shown on the permit application form, or to his last known address.
- (b) An appeal will be taken by filing with the City Finance Officer a written statement setting forth the grounds for the appeal.
- (c) The City Finance Officer will transmit the written statement to the City Council within ten (10) days of its receipt and the City Council will set a time and place for a hearing on the appeal.
- (d) A hearing will be set not later than twenty (20) days from the date of receipt of the appellant's written statement.
- (e) Notice of the time and place of the hearing will be given to the appellant in the same manner as provided for the mailing of notice of action or decision.
- (f) The decision of the City Council on the appeal will be final and binding on all parties concerned.

SECTION 1-16: CLAIMS OF EXEMPTION

Any person claiming to be legally exempt from the regulations set forth in this Ordinance, or from the payment of a permit fee, will cite to the City Finance Officer the statute or other legal authority under which exemption is claimed and will present to the City Finance Officer proof of qualification for such exemption.

SECTION 1-17: VIOLATIONS AND PENALTIES

- (a) Violation of any of the provisions of this Ordinance will be treated as a City Ordinance Violation, and will, upon conviction, be punishable by a fine as set by the City of Aurora.
- (b) In addition to any criminal enforcement the City or any individual may pursue any available civil remedies deemed appropriate and necessary.

SECTION 1-18: SEVERABILITY

The provisions of this Ordinance are declared to be severable. If any section, sentence, clause, or, phrase of the Ordinance will for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decisions will not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, but they will remain in effect; it being the legislative intent that this Ordinance will remain in effect notwithstanding the validity of any part.

Any or all Ordinances in conflict herewith are hereby repealed.

This ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

Frederick Weekes, Mayor

ATTEST:

Shannon Clifford, Finance Officer

First reading: August 18, 2014
Second reading: September 8, 2014
Vote: Yeas: 3 Neas: 0
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