

CHAPTER 10

TRANSIENT MERCHANTS, PEDDLERS, CANVASSERS, PAWN BROKERS AND PRECIOUS METAL DEALERS

1001.000. REGULATION OF PEDDLERS AND SOLICITORS

1001.001. **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 chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- A. **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 personal property that the person is carrying or otherwise transporting. The term peddler shall mean the same as the term hawker.
- B. **PERSON.** Any natural individual, group, or 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.
- C. **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 counted as regular business days.
- D. **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 provisions 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 Acanvasser@.
- E. **TRANSIENT MERCHANT.** A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, or 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 14 consecutive days.

1001.002. **EXCEPTIONS TO DEFINITIONS.**

- A. For the purpose of the requirements of this chapter, the terms PEDDLER, SOLICITOR, and TRANSIENT MERCHANT shall not apply to any person selling or attempting to sell at wholesale any goods, wares, products, merchandise or other personal property to a retailer of the items 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 delivery of perishable good 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.
- B. In addition, persons conducting the type of sales commonly known as garage sales, rummage sales, or estate sales, as well as those persons participating in an organized multi-person bazaar or flea market, shall be exempt from the definitions of PEDDLERS, SOLICITORS, and TRANSIENT MERCHANTS, as shall 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 chapter shall not excuse any person from complying with any other applicable statutory provision or local ordinance.
- C. Nothing in this chapter shall be interpreted to prohibit or restrict door-to-door advocacy. Persons engaged in door-to-door advocacy shall not be required to register as solicitors under Section 1001.07. The term DOOR-TO-DOOR ADVOCACY includes door-to-door canvassing and pamphleteering as vehicles for the dissemination religious, political and other ideas.

1001.003. **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. Ch. 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 Section 1001.07.
- 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
- D. **FEE.** All applications for a license under this chapter shall be accompanied

by the fee established by Resolution of the City Council, as it may be amended from time to time.

- E. **PROCEDURE.** Upon receipt of the completed application and payment of the license fee, the City Clerk, 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 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. Within ten regular business days of receiving a complete application the City Clerk must issue the license unless there exist grounds for denying the license under 1001.004, in which case the Clerk must deny the license. If the City Clerk denies the license, the applicant must be notified in writing of the decision, the reason for the 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 when the activity is for the purpose of exercising that person's State or Federal Constitutional rights such as the freedom of speech, press, religion and the like, except that this exemption may be lost 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. Penalty, see 1001.010.

1001.004. **LICENSE INELIGIBILITY.**

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

- 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 a 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. Those 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 found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than three complaints against the applicant with the Better Business Bureau, the Attorney General's Office, or other similar business or consumer rights office or agency, within the preceding 12 months, or three complaints filed against the applicant within the preceding five years.

1001.005. **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 1001.004.
 - 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 Clerk 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 notices 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. Penalty, see 1001.010.

1001.006. **LICENSE TRANSFERABILITY.**

No license issued under this chapter shall be transferred to any person other than the person to whom the license was issued. Penalty, see 1004.010.

1001.007. **REGISTRATION.**

All solicitors, and any person exempt from the licensing requirements of this chapter under 1001.003, shall be required to register with the city. Persons engaging in door-to-door advocacy shall not be required to register. The term DOOR-TO-DOOR ADVOCACY includes door-to-door canvassing and pamphleteering as vehicles for the dissemination of religious, political and other ideas. 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-transferable. Penalty, see 1001.010.

1001.008. **PROHIBITED ACTIVITIES.**

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

following manners:

- A. Calling attention to this 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. On any properties (i.e. real estate) abutting on or adjacent to 6th Street (North and South), 1st Street (North and South), Main Avenue, Baker Avenue, Linden Avenue, McLeod Avenue, Industrial Drive, and Industrial Lane, from Thursday through Sunday during the following events: Winsted Summer Festival, Winsted Winter Festival, Winstock and Higher Ground.

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1001.009. **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 statement. No person other than the property owner or tenant shall remove, deface or otherwise tamper with any sign or placard under this section. Penalty, see 1001.010.

1001.010. **PENALTY.**

Anyone violating the terms of this chapter is guilty of a misdemeanor (as defined in Minnesota Statutes, as amended from time to time).