

**ORDINANCE # 600-001**  
**AN ORDINANCE REGULATING SOLICITORS AND PEDDLERS WITHIN THE CITY OF HEWITT**

The City Council of the City of Hewitt, does ordain as follows:

**SECTION 1: DEFINITIONS AND EXCEPTIONS TO DEFINITIONS**

1.01: Definition: Except as otherwise provided or clearly implied by context otherwise, all terms shall be given their commonly accepted definitions. For the purpose of this Ordinance, the following definitions shall apply:

**Peddler:** A person who goes from door-to-door, house-to-house, 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 or merchandise or other personal property that the person is carrying or otherwise transporting. The terms "peddler" shall mean the same as the term "hawker".

**Person:** Any natural, individual, group, organization, corporation, partnership or association. As applied to groups, organizations, partnerships and associations, the term shall apply to 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 counted as regular business days.

**Solicitor:** A person who goes from goes from door-to-door, house-to-house, 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".

**Transient Merchant:** A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty storefront, 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 fourteen (14) consecutive days.

1.02: Exceptions to Definitions: For the purpose of the requirements of this Ordinance, the terms peddlers, 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 shall also 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 foods and dairy products, nor shall apply to any person making deliveries of perishable food or dairy products to the customers on his or her established delivery route.

In addition, person 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 peddler, 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.

Nothing in this Ordinance shall be interpreted to prohibit or restrict door-to-door advocacy.

Persons engaging in door-to-door advocacy shall not be required to register as solicitors under this Ordinance.

## SECTION 2: LICENSING AND EXEMPTIONS FROM LICENSING

2.01: No person shall conduct business as a peddler, solicitor or transient merchant within the City Limits of the City of Hewitt without first having obtained the appropriate license from the county as required by Minnesota Statute Chapter 63A, as may be amended from time to time, if the county issues a license for the activity.

2.02: Except as otherwise provided for by this Ordinance, no person shall conduct business either as a peddler or a transient merchant without first having obtained a license from the City. Solicitors need not be licensed, but are required to register pursuant to Section \*\*\*\*\*

2.03: Application for a city license to conduct business as a peddler or transient merchant shall be made at least fourteen (14) 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 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. a physical description of the applicant;
- d. full address of applicant's permanent physical residence;
- e. telephone number of applicant's permanent residence;
- f. 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;
- g. full address of applicant's regular place of business (if any);
- h. any and all business related telephone number(s) of the applicant;
- i. the type of business for which the applicant is applying for a license;
- j. whether the applicant is applying for a daily or annual license;
- k. 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, with a maximum of fourteen (14) consecutive days
- l. 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;
- m. 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;
- n. a list of the three most recent locations where the applicant has conducted business as a peddler or transient merchant;
- o. proof of any requested 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;
- q. a general description of the items to be sold or services to be provided;
- r. all additional information deemed necessary by the City Council;
- s. the applicant's driver's license number or other acceptable form of identification; and
- t. 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.

2.04: All applications for a license under this chapter shall be accompanied by the fee established in the Master Fee Schedule, as may be amended from time to time.

2.05: Upon receipt of the completed application and payment of the application and 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 an 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 exists grounds for denying the license, 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 denial, and of the applicant's right to appeal the denial by requesting, within twenty (20) days of the notice of denial decision, a public hearing before the City Council. The City Council shall hear the appeal within twenty (20) days of the date of request. The decision of the City Council following the public hearing can be appealed by petitioning to the Minnesota Court of Appeals for a writ of certiorari.

2.06: 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.

2.07: Exemptions:

- a. No license shall be required for any person to sell or attempt to sell, or take or attempt to take orders for any product grown, produced, raised or cultivated on a farm.
- b. No license shall be required for any person going from door-to-door, house-to-house, business-to-business, street-to-street, or any 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 freedom of speech, press, religion or the like, except that this exemption may be lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity.
- c. Professional fund raisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of this Ordinance.

### SECTION 3: LICENSE INELIGIBILITY

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 a part of the application, or the failure to sign the application, or the failure to pay any required fee at the time of the application;
- c. the conviction of the applicant within the past five years from the date of the application for any violation of federal or state or local statutes, laws or ordinances, which adversely reflects on the person's ability to conduct 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, swindle, fraud, unlawful business practice 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; or
- 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 twelve (12) months, or three complaints filed against the applicant within the preceding five (5) years.

### SECTION 4: LICENSE SUSPENSION AND REVOCATION

4.01: Any license issued under the provisions of this Ordinance may be suspended or revoked at the discretion of the City Council 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 3;

- d. violation of any provision of this Ordinance.
- 4.02: 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.
- 4.03: Prior to revoking or suspending any license under this Section, the City shall provide the license holder with written notice of the alleged violations and inform the license holder of his or her right to a hearing on the alleged violation. Notice shall be delivered in person or by United States Mail to the permanent residential address listed on the application, or if no residential address is listed, to the business address provided on the license application.
- 4.04: Upon receiving the notice provided for in Section 4.03, above, 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 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. Within three regular business days of the hearing, the Council shall notify the licensee of its decision.
- 4.05: If, in the discretion of the City Council, imminent harm to the health or safety of the public may occur because of the action 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 Section 4.04.
- 4.06: Any person whose license is suspended or revoked under this Section shall have the right to appeal that decision in court.

**SECTION 5: LICENSE TRANSFERABILITY:** No license issued under this Ordinance shall be transferred to any person other than the person whom the license was issued.

**SECTION 6:** All solicitors, and any person exempt from the licensing requirements of this Ordinance, shall be required to register with the City. Persons engaging in door-to-door advocacy shall not be required to register. Registrations 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 Registrations shall be non-transferable.

**SECTION 7: 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 a closed 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/or 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 based solely on the City having issued a license or certification of registration to that person;
- g. remaining on the property of another when requested to leave, or to otherwise conduct business in a manner that is generally considered obscene, threatening, intimidating or abusive.

**SECTION 8:** 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 (4) inches long and four (4) 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 such sign or placard.

Passed by at least a 4/5ths majority vote of the City Council of the City of Hewitt, County of Todd and State of Minnesota, on this — day of April, 2009.

By: Juanita Mitchell, Mayor

Attest: Miriam A. Collom, City Clerk/Treasurer