

**PUBLISHED JUNE 16, 2014**

**OFFICIAL PROCEEDINGS**

Excerpt from the minutes of the Duluth City Council meeting held on Monday, June 9, 2014, at 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

**ORDINANCE NO. 10301**

**AN ORDINANCE AMENDING SECTIONS 27-5, 27-6, 27-7 AND 27-8 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATED TO PEDDLERS AND CANVASSERS.**

The city of Duluth does ordain:

Section 1. That Section 27-5 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 27-5. Definitions; exceptions to definitions.

(a) For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Solicitor. A person who goes about from house-to-house, business-to-business, street-to-street, or any other type of place-to-place movement within the city for the purpose of obtaining, or attempting to obtain orders for the retail sale of services or personal property of any nature whatsoever, for future performance or delivery. For the purposes of this ordinance, the term solicitor shall have the same meaning as the term canvasser.

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 movement, for the purpose of offering for sale, displaying or exposing the 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.

Person. Any natural individual, group, organization, corporation, partnership, or similar association.

Non-commercial door-to-door advocate. One who goes door-to-door for the primary purpose of disseminating religious, political, social, or other ideological beliefs. For purposes of this ordinance, the term door-to-door advocate shall include door-to-door canvassing and pamphleteering intended for non-commercial purposes.

Transient merchant. A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, or other portable shelter, or empty store front, building, hotel or motel 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 14 days;

(b) Exceptions to definitions.

For purposes of this Article, the terms solicitor, peddler and transient merchant shall not apply to:

(1) Non-commercial door-to-door advocates. Nothing within this ordinance shall be interpreted to prohibit or restrict non-commercial door-to-door advocates. Persons engaging in non-commercial door-to-door advocacy shall not be required to register as a solicitor under Section 27-6(g);

(2) 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;

(3) 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;

(4) Any person making deliveries of perishable food and dairy products to the customers on his or her established delivery route;

(5) 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;

(6) Any person conducting the type of sale commonly known as garage sales, rummage sales or estate sales;

(7) Any officer of the court conducting a court-ordered sale.

Exemption from these definitions shall not, for the scope of this Article, excuse any person from complying with any other applicable statutory provision or ordinance.

Section 2. That Section 27-6 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 27-6. License--required; exemptions; application; procedure.

(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 may be required by Minnesota Statutes 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 ordinance, no person within the city shall engage in or carry on the business of a peddler or transient merchant without first obtaining a city license to carry on such business. Said license is not required for operations occurring entirely within a permitted community event pursuant to Section 45-49. Solicitors need not be licensed, but are required to register with the city pursuant to Section 27-6(g);

(c) Application. An application for a license required by this Article shall be made at least 14 regular business days before the applicant desires to begin conducting business within the city. The application for a license shall be made on a form approved by and available from the office of the city clerk. All applications shall be signed by the applicant. All applications shall include the following information:

(1) The applicant's full legal name;

(2) Any and all other names under which the applicant has or does conduct business, or to which the applicant will officially answer to;

(3) A physical description of the applicant (hair color, eye color, height, weight, any distinguishing marks or 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 an agent;

(7) Full address of applicant's regular place of business, if any exists;

(8) Any and all business-related telephone numbers of the applicant, including cellular phones and facsimile (fax) machines;

(9) A general description of the items to be sold;

(10) A statement as to whether or not the applicant has been convicted within the last ten years of any felony, gross misdemeanor, misdemeanor or ordinance violation for violating any state or federal statute or local ordinance, other than minor traffic offenses;

(11) A list of the three most recent locations where the applicant has conducted business as a peddler;

(12) The applicant's driver's license number or other acceptable form of photo identification;

(13) The license plate number, registration information, vehicle identification number and physical description for any vehicle to be used in conjunction with the licensed business operation;

(14) Any and all additional information as may be deemed necessary by the chief administrative officer or his/her designee;

(d) Fee. All applications for a license under this Article shall be accompanied by the fee established under Section 27-8;

(e) Procedure. Upon receipt of a complete application and payment of the license fee, the city will conduct an investigation, including background checks, necessary to verify the information provided with the application. Within 12 regular business days of receiving a complete application the city must issue the license unless grounds exist for denying the license application under Section 27-7, in which case the city must deny the request for a city license. If the city denies the license application, the applicant must be notified in writing of the decision, the reason for the denial and the applicant's right to appeal the denial under Section 27-7;

(f) 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 for any person going from house-to-house, door-to-door, business-to-business, street-to-street, or any 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 what would properly be considered a commercial activity;

(g) Registration.

(1) All solicitors and any person exempt from the licensing requirements of this ordinance shall be required to register with the city prior to engaging in those activities. 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 registration. Certificate of registration shall be non-transferrable;

(2) Individuals that will be engaging in non-commercial door-to-door advocacy shall not be required to register.

Section 3. That Section 27-7 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 27-7. Same--Investigation; denial, revocation and suspension.

(a) The application for a license required by this Article shall be thoroughly investigated by the Duluth police department, including background checks, who thereafter shall make a recommendation to the chief administrative officer for the approval or disapproval of such license. Licenses may be denied, suspended, or revoked by the chief administrative officer or his/her designee for the following reasons:

(1) The failure of an applicant to truthfully provide any information requested by the city as part of the application process; or

(2) The failure of an applicant to sign the license application; or

(3) The failure of the applicant to pay the required fee at the time of application; or

(4) A conviction by the applicant or licensee within the past ten 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; or

(5) The revocation within the past five years of any license issued to an applicant for the purpose of conducting business as a peddler, solicitor or transient merchant; or

(6) 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 complaints against an applicant with the Better Business Bureau, the office of the Minnesota attorney general or other state attorney general's office, or similar business or consumer

rights office or agency, within the preceding 12 months, or three complaints filed with the city against an applicant within the preceding five years; or

(7) The failure of an applicant to obtain and demonstrate proof of having obtain any required county license;

(b) Any person aggrieved by a denial, suspension or revocation of a city license may appeal such decision to the city council. Notice of such appeal to the city council must be made in writing to the city clerk within ten calendar days after such written decision is mailed to the applicant. The city council shall hear such appeal within 15 business days of the date the appeal is filed with the city clerk. The decision of the city council can be appealed by petitioning the Minnesota court of appeals for writ of certiorari.

Section 4. That Section 27-8 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 27-8. Same--Fees.

Annual fees for licenses required by this Article shall be set in accordance with Section 31-6(a) of this Code. All licenses issued under this Article shall expire on the 31st day of December each year. Licenses are non-transferrable. Licenses approved in 2014 will not expire until the end of the day on December 31, 2015.

Section 5. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: July 16, 2014)

Councilor Hanson moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Larson, Russ, Sipress and President Krug -- 9

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed June 9, 2014  
Approved June 9, 2014  
DON NESS, Mayor