

ORDINANCE NO. 3, 2010

AN ORDINANCE REGULATING THE CONDUCT OF PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS WITHIN THE CITY OF SUNDANCE, WYOMING; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUNDANCE, CROOK COUNTY, WYOMING:

SECTION 1: PURPOSE

This ordinance is enacted for the purpose of regulating the activities of peddlers, solicitors, and transient merchants within the City of Sundance.

SECTION 2: DEFINITIONS

Except as otherwise provided, all terms shall be given their commonly accepted definitions. For the purpose of this ordinance, the following definitions shall apply.

- (1) **CHARITABLE.** Means and includes the words patriotic, philanthropic, social service, welfare, benevolent, educational, civic or fraternal, either actual or purported.
- (2) **GOODS.** As governed by the definition found at Wyoming Statute 34.1-2-105, but for purposes of this ordinance shall not include alcoholic beverages.
- (3) **NON-COMMERCIAL DOOR-TO-DOOR ADVOCATE.** A person 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 fall under the term solicitor and include door-to-door canvassing and pamphleteering intended for non-commercial purposes.
- (4) **NON-PROFIT ORGANIZATION.** Any person recognized as a not-for-profit entity under the Internal Revenue Code.
- (5) **PEDDLER.** Any person, whether a resident of the city or not, who goes from place-to-place for the purpose of offering, 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; provided that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this ordinance shall be deemed a peddler subject to the provisions of this ordinance. The word "peddler" shall include the terms "hawker" and "huckster."
- (6) **PERSON.** Any individual, entity, firm, partnership, corporation, company, association, society, organization, league, or similar association.

(7) **PROFESSIONAL FUNDRAISER:** Any person, including a corporation or other entity, who, for compensation, performs any solicitations or other services for a religious, political, social, or other charitable organization.

(8) **SOLICITOR.** Any person whether a resident of the city or not, who goes from place-to-place for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, or personal property of any nature whatsoever for future delivery, or for offering services to be furnished or performed in the future, whether or not carrying or showing catalogs or samples of such sales, and regardless of whether he or she is collecting advance payments on such sales and/or services; provided, that this definition shall include any person who, for him or herself, or for another person, hires, leases, uses or occupies any room, building, structure, hotel/motel room, lodging house, apartment, shop or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery. The word "solicitor" shall include the terms "canvasser" and "drummer."

(9) **STREET.** A right-of-way dedicated to the public, but does not include the sidewalks within a public right-of-way.

(10) **TRANSIENT MERCHANT.** Any person, whether a resident of the city or not, who temporarily engages in the business of selling and delivering goods, wares, products, merchandise, or other personal property of any nature whatsoever, who hires, leases, uses or occupies any building, structure, empty store front, motor vehicle, trailer, boxcar, tent, boat or other portable shelter, public rooms in hotels/motels, lodging houses, apartments, shops or any streets, alleys, public places or other places for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction, and who does not remain in any one location for more than fourteen (14) consecutive days; provided that such definition shall not include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. The term "transient merchant" shall include the terms "temporary merchant," "itinerate merchant," and "itinerate vendor."

SECTION 3: EXCEPTIONS TO DEFINITIONS

For the purpose of this ordinance, the terms **PEDDLER**, **SOLICITOR**, and **TRANSIENT MERCHANT** shall not apply to:

(1) Any non-commercial door-to-door advocate. Nothing within this ordinance shall be interpreted to prohibit or restrict non-commercial door-to-door advocates, and any such person shall not be required to register as a solicitor under Section 4.

(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 person participating in an organized multi-person bazaar or flea market.

(8) Any person conducting an auction as a properly licensed auctioneer.

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

Exemption from these definitions shall not excuse any person from complying with any other applicable statutory provision or requirement provided by another city ordinance.

SECTION 4: LICENSING; EXEMPTIONS.

(1) **License required.** No person shall conduct business within the city as a peddler or a transient merchant without first obtaining a city license. Solicitors need not be licensed, but are required to register with the City pursuant to Section 8. A license shall be obtained for each temporary or permanent structure or location which is used for the sale or distribution of goods within the city. A license shall be required for goods sold or distributed, including but not limited to, food products, general merchandise, and body art.

(2) **Application.** Persons desiring a peddler or transient merchant license must submit written application on a form approved by the city council and available from the office of the city clerk at least seven (7) regular business days before the applicant desires to begin conducting a business operation within the city. All applications must include all information requested and shall be signed by the applicant.

(3) **Fee.** All applications for a license shall be accompanied by the fee established by resolution in the city licensing fee schedule as it may be amended from time to time.

(4) **Procedure.** Upon receipt of properly completed application and payment of the required license fee, the city clerk will forward the application to the police department for applicant background review and recommendation. The police department shall return the application to the city clerk with recommendation of approval or disapproval and the reasons therefore within seven (7) working days. If the recommendation of the police department is for approval the license shall be issued by the city clerk.

(5) ***Duration.*** An annual license granted under this ordinance shall be valid for one calendar year from the date of issuance. All other licenses granted to peddlers and transient merchants under this ordinance shall be valid only during the time period indicated on the license.

(6) ***Professional fundraisers not exempt.*** A professional fundraiser working on behalf of an otherwise exempt group or person shall not be exempt from the licensing requirements of this ordinance.

(7) ***License exemptions.***

The following are exempt from the provisions of this ordinance:

(A) any person selling, or undertaking orders to sell, agricultural fruits and vegetables, dressed meats, fowls or farm products, baked goods, or handicraft products grown, produced, cultivated, or raised by any bona fide resident of Crook County, Wyoming.

(B) charitable, non-profit and religious organizations and all persons representing them; provided, that the proceeds from sales are used only for charitable, non-profit or religious events or purposes.

(C) any fund-raising sales by a recognized school or educational organization, where profits solely benefit student members or a school/organization sponsored event.

(D) any sales of services, goods, wares or merchandise at an event such as a craft fair, festival, bazaar or similar activity sponsored or sanctioned by any governmental entity.

(E) any person going from place-to-place 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.

SECTION 5: POSSESSION AND DISPLAY OF LICENSE

Every person licensed pursuant to this ordinance must at all times possess and display the license in a conspicuous place at the location authorized by the license. All persons and employees required to be in possession of a license must produce and exhibit the same whenever requested to do so by any police officer, consumer, or any other person.

SECTION 6: ASSOCIATION WITH LOCAL BUSINESSES, ETC.

Persons engaged in any business regulated by this ordinance shall not be relieved from complying with the provisions of this ordinance merely by reason of associating temporarily with any local dealer, trader, merchant, not-for-profit organization, charitable organization or auctioneer or by conducting any transient

business in connection with, as a part of or in the name of any local dealer, trader, merchant, not-for-profit organization, charitable organization or auctioneer.

SECTION 7: LICENSE TRANSFER AND ASSIGNMENT.

No license issued under this ordinance shall be transferred or assigned.

SECTION 8: CERTIFICATE OF REGISTRATION REQUIRED.

(1) All solicitors and any person exempt from the licensing requirements of this ordinance under Section 4 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 the registration. Certificates of registration shall be non-transferable.

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

SECTION 9: PROHIBITED PRACTICES.

General Prohibitions: No peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or other person engaged in other similar activities shall conduct business in any of the following manner:

- (1) obstruct the free flow of traffic, either vehicular or pedestrian, on any street, sidewalk, alleyway, or other public right-of-way.
- (2) create a threat to the health, safety, and welfare of any specific individual or the general public.
- (3) commence business before 9:00 a.m. or after 7 p.m., local time.
- (4) fail to provide proof of license, or registration, and identification when requested.
- (5) use the license or registration of another person.
- (6) allege false or misleading statements about the products or services 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.
- (7) remain on the property of another when requested to leave.
- (8) otherwise operate their business in any manner that a reasonable person would find obscene, threatening, intimidating or abusive.
- (9) sell goods on the streets of the city, except that goods may be sold from vehicles which are parked on the street and have openings facing a sidewalk. If a person does elect to sell goods on a sidewalk or street in front of another

person's business or residence, the seller of the goods must first obtain the landowner's written permission to do so.

Solicitor Prohibitions: No solicitor or other person engaged in similar activities shall conduct business in any of the following manner:

- (1) engage in solicitation upon any person or premises, other than upon prior invitation of the occupant of any such premises, prior to 9:00 a.m. or after 7:00 p.m. local time.
- (2) engage in solicitation by more than two (2) persons upon any person or premises at the same time for the same goods or merchandise, services, or for religious or charitable purposes. Each individual agent of a person or group engaged in solicitation in violation of this provision shall be deemed to have violated this ordinance.
- (3) fail to verbally identify himself or herself and the purpose of the solicitation at the time of initial contact with a prospective customer or donor.
- (4) misrepresent the purpose of the solicitation or misrepresent the goods sold or use any false, deceptive or misleading misrepresentation to induce a sale or contribution or use any plan, scheme or ruse which misrepresents the true status or objective of the person making the call.
- (5) engage in solicitation upon premises where the occupant has posted a visible sign requesting no solicitation.
- (6) engage in solicitation on any premises without obtaining written permission from the owner of the premises.

SECTION 10: PENALTY.

Any individual found in violation of any provision of this ordinance, shall be guilty of a misdemeanor and shall be punished by having a maximum fine of one hundred dollars (\$100.00) imposed against them. The city council may suspend or revoke the license of any person violating any provision of this ordinance.

SECTION 11: REPEALING CLAUSE.

Ordinance No. 8, 2002 and Ordinance No. 1, 2005 are hereby repealed by this ordinance. Furthermore, this ordinance repeals any ordinance of the City of Sundance in conflict with this ordinance.

SECTION 12: SEVERABILITY CLAUSE.

If any provision of this ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

SECTION 13: PROVIDING FOR AN EFFECTIVE DATE.

This ordinance shall be effective upon completion of all readings, publications and other acts required by law.

PASSED, ADOPTED AND APPROVED this 5th day of October, 2010.

CITY OF SUNDANCE

BY: _____
FRED TSCHETTER, MAYOR

ATTEST:

CITY CLERK

(SEAL)

1st reading August 3, 2010
2nd reading September 7, 2010
3rd reading October 5, 2010

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