

ORDINANCE 2009-436

AN ORDINANCE AMENDING CHAPTER 58 PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS, ARTICLES I AND II, TO AMEND SECTIONS 58-1 to 58-6 and 58-31 to 58-41

THE CITY OF HUGO ORDAINS:

Section 1. The City Council of the City of Hugo does hereby amend Chapter 58, Articles I and II, to amend sections 58-1 to 58-6 and 58-31 to 58-41, to state the following:

ARTICLE I. IN GENERAL

Sec. 58-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

PEDDLER means 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 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. For purpose of this ordinance, the term peddler shall have the same common meaning as the term hawker.

SOLICITOR means 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 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.

CANVASSER means a person who is in practice of going from location to location with the primary purpose of furthering religious, social, or political advocacy.

TRANSIENT MERCHANT means a person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, 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 in any one location for more than 30 consecutive days.

Sec. 58-2. Penalty.

Any person or organization that violates any provision of this chapter is guilty of a petty misdemeanor.

Sec. 58-3. Exemptions.

This article does not apply to the following:

- (1) Sales of goods, merchandise or services to businesses, commercial, or industrial users at their usual place of business.
- (2) Deliveries of previously sold goods or services in the regular course of business, or deliveries or sales made as a part of a regular established route to preexisting customers.
- (3) Vendors who make an uninvited call upon the occupant of a residence as a preliminary step to the establishment of regular route services for the sale and delivery of commodities and services to regular customers such as vendors of milk, groceries, and other perishable commodities; soft water service; laundry and dry cleaning pick-up and delivery; and newspapers.
- (4) Any sale under court order.
- (5) Any bona fide auction sale by a city resident that is using the services of a properly licensed auctioneer.
- (6) Sidewalk sales related to the adjoining business.
- (7) Garage sales or rummage sales when conducted by a nonprofit organization, or when conducted upon the premises of the owner of the articles being offered for sale, provided that such sales do not last longer than 72 hours, and provided that no more than three sales be conducted on any given location within one year.
- (8) Sale of admissions by local school students to a school function or by local bona fide civic or nonprofit organizations for entertainment functions sponsored by such organizations.
- (9) Sales allowed by state law which prohibit local licensing or regulation.
- (10) Any person canvassing.

Sec. 58-4. Prohibited practices.

It is unlawful and a violation of this chapter for any peddler, solicitor or transient merchant to:

- (1) Refuse to leave the premises when requested by the owner, lessee, person in charge thereof, or the person being solicited.

(2) Display merchandise or make sales or solicitations directly from vehicles or trailers on city streets or alleys.

(3) Engage in business after the hour of sunset or before 8:00 a.m. unless a previous appointment has been made for a different time.

(4) Obstruct the free flow of traffic, either vehicular or pedestrian, on any street, sidewalk, alleyway, or other public right-of-way.

(5) Conduct business in a way as to create a threat to the health, safety, and welfare of any specific individual or the general public.

(6) Fail to provide proof of license, or registration, and identification when requested.

(7) Use the license or registration of another person.

(8) 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.

(9) Otherwise operate their business in any manner that a reasonable person would find obscene, threatening, intimidating or abusive.

Sec. 58-5. Use of streets.

No permittee shall have any exclusive right to any location in the public streets or alleys, nor shall any be permitted a stationary location thereon, nor shall any be permitted to operate in a congested area where such operation might impede or inconvenience the public use of such streets or alleys. For the purpose of this article, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. No permit shall be issued for sales or displays from a location which does not have sufficient parking for customers and for areas where customer parking would interfere with normal traffic flow.

Sec. 58-6. Permission of property owner required.

No peddler, solicitor or transient merchant shall sell or offer for sale any goods, wares, or merchandise or personal property of any nature whatsoever within the city from a stationary location on public or private property without first obtaining the written consent of the property owner or authorized occupant.

ARTICLE II. PERMIT

Sec. 58-31. Permit required.

It is unlawful for any peddler, solicitor, or transient merchant to engage in any business, solicitation, or activities as described in section 58-1 within the city without first obtaining a permit therefor in compliance with the provisions of this article.

Sec. 58-32. Applicants.

Applicants for a permit under this article shall file with the city clerk a sworn application in writing on a form to be furnished by the city which will give the following information:

- (1) The name and permanent home and business address of the applicant and all persons to be associated with the applicant in the business or activity.
- (2) A brief description of the nature of the business or the purpose or cause for which the permit is sought.
- (3) If the permit is sought to be issued in the name of an organization or other business entity, the names and addresses of the principal officers and directors of the organization, the address and phone number of the main office or headquarters of the organization conducting or sponsoring the activity, and the names and addresses of the persons directly supervising and responsible for the business, solicitation, or activity to be conducted.
- (4) In the case of transient merchants, the place where the business is to be carried on, the length of time for which the permit is sought, and a general description of the goods or merchandise to be sold.
- (5) A list of the last three municipalities, if any, where the applicant carried on a business or activity similar to the one for which the permit is sought.
- (6) The names and addresses of at least three references who will substantiate the applicant's moral character and business responsibility or other evidence of the character and responsibility of the applicant.
- (7) Applicant's state sales tax permit number, if applicable.
- (8) A copy of driver's licenses or photo identification of all peddlers, solicitor, and transient merchants that will be conducting business in the City of Hugo.
- (9) A signed authorization form to release information and allowing the City to conduct a background check on all persons associated with the business.
- (10) All transient merchants shall submit a site plan for staff review.

(11) A non refundable fee as established by the City's fee schedule.

Sec. 58-33. Investigation and issuance of permit.

(1) Upon receipt of the application and payment of the license fee, the city clerk will, within 5 regular business days, determine if the application is complete. An application will be considered complete 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 10 regular business days of receiving a complete application the city clerk must issue the license unless grounds exist for denying the license application under Section 58-34, in which case the clerk must deny the request for a city peddler or transient merchant license. If the city clerk denies the license application, the applicant must be notified in writing of the decision, the reason for denial and the applicant's right to appeal the denial by requesting, within 20 days of receiving notice of rejection, a hearing before the City Council. The City Council shall hear the appeal within 20 days of the date of the request for a hearing. The decision of the City Council following the hearing can be appealed by petitioning the Minnesota Court of Appeals for a writ of certiorari.

(2) All transient merchants that are issued a permit shall agree to keep the site in a clean and neat condition at all times. The applicant shall also agree to restore the property to its original condition following the sale and their exiting of the property.

Sec. 58-34. Permit Ineligibility.

The following shall be grounds for denying a peddler, solicitor or transient merchant license:

- (A) The failure of an applicant to obtain and demonstrate proof of having obtained any required state or county license.
- (B) The failure of an applicant to truthfully provide any information requested by the city as part of the application process.
- (C) The failure of an applicant to sign the permit application.
- (D) The failure of an applicant to pay the required fee at the time of application.
- (E) A conviction within the past five (5) 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.

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

(G) 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 (3) complaints against an applicant with the Better Business Bureau, the Office of the Minnesota Attorney General or other state attorney general's office, or other similar business or consumer rights office or agency, within the preceding twelve (12) months, or three (3) complaints filed with any city against an applicant within the preceding five (5) years.

Sec. 58-35. Permit fees.

The fees for any permit to be issued under this article shall be as established by the city council. The fee shall be payable at the time of the filing of the application and is nonrefundable.

Sec. 58-36. Fee exemption.

No fee shall be required from a bona fide charitable, religious, civic, educational, or political organization provided the proceeds of any sale or solicitation are being used for the legitimate purpose of such organization.

Sec. 58-37. Permit not transferable or refundable.

All permits shall be nontransferable. No refund shall be made on unused portions of permit fees.

Sec. 58-38. Permits to be carried and exhibited.

Permits shall be carried by the permittee or conspicuously posted in the permittee's place of business, and the permit shall be exhibited to any officer or citizen upon request. In the case where more than one individual shall be involved in the activity or solicitation, the applicant shall make sufficient copies of the permit to be made available to each peddler or solicitor acting on behalf of the group, organization or legal entity.

Sec. 58-39. Expiration of permit.

All permits issued under the provisions of this article shall expire at midnight on the date specified on the permit. All permits are issued for a maximum of 30 days/

Sec. 58-40. Revocation of permit.

Permits used under the provisions of this chapter may be revoked by the council of the city after notice and hearing for any of the following causes:

- (1) Fraud, misrepresentation, or incorrect statement contained in the application for the permit.
- (2) Fraud, misrepresentation, or incorrect statement made in the course of carrying on the business as solicitor, canvasser, peddler, or transient merchant. (3) Any violation of this article.
- (4) Conviction of any crime or misdemeanor.
- (5) Conducting the business of peddler, canvasser, solicitor, or transient merchant, , as the case may be, in an unlawful manner or in such a manner as to constitute a breach of peace or to constitute a menace to health, safety, or general welfare of the public.
- (6) Notice of the hearing for revocation of a permit shall be given by the city clerk in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the permittee at his last known address or the address set forth on his application at least seven days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least five days prior to the date set for hearing.

Sec. 58-41. Reapplication.

No permittee whose permit has been revoked shall make further application until at least six months have elapsed since the last previous revocation unless otherwise permitted by the city council.

Section 2. Severability. In the event that a court of competent jurisdiction adjudges any part of this Ordinance to be invalid, such judgment shall not affect any other provision of this Ordinance not specifically included with that judgment.

Section 3. Effective Date. This amendment shall take effect upon its passage and publication.

ADOPTED BY THE HUGO CITY COUNCIL ON DECEMBER 7, 2009

Fran Miron, Mayor

ATTEST:

Michele Lindau, City Clerk