

ORDINANCE NO. 19

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF PAULLINA, IOWA 2016, BY AMENDING PROVISIONS PERTAINING TO PEDDLERS, SOLICITORS AND TRANSEMENT MERCHANTS

Be it Enacted by the City Council of the City of Paullina, Iowa:

TITLE V – BUSINESS AND OCCUPATION REGULATIONS CHAPTER 3 – LICENSING, ARTICLE 4 - PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS, SECTION 4 is hereby amended as follows:

- 4.01 PURPOSE. The purpose of this Article is to protect the residents of the City against fraud, unfair competition and intrusion into the privacy of their homes by licensing and regulating peddlers, solicitors, and transient merchants.  
(Easterly v. Inc. Town of Irwin, 99 Iowa 694, 68 N. W. 919 (1896) and Code of Iowa, Sec. 364.1)
- 4.02 DEFINITIONS. For use in this chapter, the following terms are defined:
1. “Peddler” shall mean any person carrying goods or merchandise from house-to-house or upon the public street.
  2. “Solicitor” shall mean any person who solicits or attempts to solicit from house-to-house or upon the public street an order for goods, subscriptions or merchandise to be delivered at a future date.
  3. “Transient merchant” shall mean any person, firm or corporation who engages in a temporary or itinerant merchandising business and in the course of such business hires, leases or occupies any building or structure whatsoever. Temporary association with a local merchant, dealer, trader or auctioneer, or conduct of such transient business in connection with, as a part of, or in the name of any local merchant, dealer, trader or auctioneer shall not exempt any person, firm or corporation from being considered a transient merchant.
- 4.03 LICENSE REQUIRED. Any person engaging in peddling, soliciting or in the business of a transient merchant in this city without first obtaining a license as herein provided shall be in violation of this ordinance.
- 4.04 RELIGIOUS AND CHARITABLE ORGANIZATIONS EXEMPT. Authorized representatives of religious and charitable organizations desiring to solicit money or to distribute literature shall be exempt from the operation of Section 4.05 to 4.07 of this ordinance. All such organizations shall be required to submit in writing to the city clerk the name and purpose of the cause for which such activities are sought, names and addresses of the officers and directors of the organization, the period during which such activities are to be carried on, and

whether any commissions, fees or wages are to be charged by the solicitor for his or her efforts and the amount thereof. If the city clerk shall find that the organization is a bona fide charity or religious organization the clerk shall issue, free of charge, a license containing the above information to the applicant. The following are excluded from the application of this article.

(State of Iowa v. Garbroski, 111 Iowa 496, 82 N. W. 959 (1900))

- 1. Newspapers. News boys and girls.
- 2. Club Members. Members of local Boy Scout, Girl Scout, Campfire Girls, 4-H Clubs, Future Farmers of America and similar organizations.
- 3. Farmers. Farmers who offer for sale products of their own raising.
- 4. Students. Students representing the South O'Brien Community School District and Zion St. John Lutheran School conducting projects sponsored by organizations recognized by the schools.
- 5. Milk Delivery. Milk delivery men who only incidentally solicit additional business or make special sales.
- 6. Resale or Institutional Use. Persons customarily calling on businesses or institutions for the purpose of selling products for resale or institutional use.

4.05 APPLICATION. An application in writing shall be filed with the city clerk for a license under this chapter. Such application shall set forth the applicant's name, permanent and local address, and business address, if any. The application also shall set forth the applicant's employer, if any, and the employer's address, the nature of the applicant's business, the last three (3) places of such business, and the length of time sought to be covered by the license. A fee of \$5.00 shall be paid at the time of filing such application to cover the cost of investigating the facts stated therein.

4.06 LICENSE ISSUED. If the clerk finds the application is completed in conformance with the requirements of this chapter, the facts stated therein are found to be correct, the license fee paid and surety bond posted, a license shall be issued immediately.

4.07 LICENSE FEES. The following license fees shall be paid to the Clerk prior to the issuance of any license:

- 1. For one day \$10.00
- 2. For one week \$50.00
- 3. For up to six (6) months \$150.00
- 4. For one year of major part thereof \$300.00

- 4.08 DISPLAY. Each solicitor or peddler shall at all times while doing business in this city keep in his or her possession the license provided for in this article, and shall, upon the request of prospective customers, exhibit the license as evidence that the person has complied with all requirements of this chapter. Each transient merchant shall display publicly his or her license in his or her place of business.
- 4.09 LICENSE NOT TRANSFERABLE. Licenses issued under the provisions of this chapter are not transferable in any situation and are to be applicable only to the person filing the application.
- 4.10 REBATES. Any licensee, except in the case of a revoked license, shall be entitled to a rebate of part of the fee paid if the license is surrendered before it expires. The amount of the rebate shall be determined by dividing the total license fee by the number of days for which the license was issued and then multiplying the result by the number of full days that have not yet expired. In all cases, at least five dollars (\$5.00) of the original fee shall be retained by the City to cover administrative costs.
- 4.11 REVOCATION. The city council, after notice and hearing, may revoke any license issued under this chapter where the licensee in the application for the license or in the course of conducting his or her business has made fraudulent or incorrect statements or has violated this chapter or has otherwise conducted his or her business in an unlawful manner, or the licensee has conducted his or her business in such a manner as to endanger the public welfare, safety, order or morals.
- 4.12 EXPIRATION. All licenses granted under this chapter shall expire at 6:00 p.m. of the last day for which the licenses is issued.
- 4.13 NOTICE. The Clerk shall send a notice to the licensee at the licensee's local address, not less than ten (10) days before the date set for a hearing on the possible revocation of a license. Such notice shall contain particulars of the complaints against the licensee, the ordinance provisions or State statues allegedly violated, and the date, time and place for a hearing on the matter.
- 4.14 HEARING. The council shall conduct a hearing at which both the licensee and any complainants shall be present to determine the truth of the fact alleged in the complaint and notice. Should the licensee, or his or her authorized representative, fail to appear without good cause, the council may proceed to a determination of the complaint.
- 4.15 RECORD AND DETERMINATION. The council shall make and record findings of fact and conclusions of law, and shall revoke only when, upon review of the entire record, the council finds clear and convincing evidence of substantial violation of this article or state law.

- 4.16 APPEAL. If the council revokes or the clerk refuses to issue a license, the council or the clerk shall make a part of the record the reasons therefore. The licensee or the applicant shall have a right to a hearing before the council at its next regular meeting. The council may reverse, modify or affirm the decision by a majority vote of the council members present.  
(Constitution of Iowa, Art. I, Sec. 9)
- 4.17 EFFECT OF REVOCATION. Revocation of any license shall bar the licensee from being eligible for any license under this article for a period of one year from the date of revocation.
- 4.18 HOURS OF OPERATION: All peddlers, transient merchants and solicitor's licenses shall provide that said licenses shall be in force and effect only between the hours of eight (8:00) a.m. to seven (7:00) p.m.
- 4.20 BOND REQUIRED. Before a license under this chapter is issued to a transient merchant, an applicant shall provide to the Clerk evidence that the applicant has filed a bond with the Secretary of State in accordance with Chapter 9C of the Code of Iowa.

SECTION 2. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be judged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 3. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

Passed and adopted by the Council of the City of Paullina, on this 4th day of January, 2021.

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John Ihle, Mayor

ATTEST:

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Sandy Fritz, City Clerk

I certify that the foregoing was published as Ordinance No. 19 on the 14<sup>th</sup> day of January, 2021.

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Sandy Fritz, City Clerk