

ORDINANCE NO. 4707

AN ORDINANCE REPEALING ARTICLE 12 OF CHAPTER XXI RELATING TO TRANSIENT MERCHANTS AND RE-ENACTING ARTICLE 12 OF CHAPTER XXI OF THE GRAND FORKS CITY CODE RELATING TO DOOR-TO-DOOR SALES AND SOLICITATION

BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND FORKS, NORTH DAKOTA, PURSUANT TO THE HOME RULE CHARTER OF THE CITY OF GRAND FORKS, NORTH DAKOTA, THAT:

SECTION I. REPEALING CLAUSE.

Article 12 of Chapter XXI of the Grand Forks City Code relating to transient merchants is, in all things, hereby repealed.

SECTION II. RE-ENACTING CLAUSE.

Article 12 of Chapter XXI of the Grand Forks City Code relating to door-to-door sales and solicitation is hereby adopted to provide as follows:

21-1201. - Purpose and Intent.

For the safety, privacy and protection of residents of the community, and for the preservation of the rights of people conducting protected speech, the city council finds it is necessary, reasonable and proper that certain door-to-door sales and solicitations be regulated and that permissible sales or solicitations be restricted to reasonable hours.

21-1202. - Definitions.

In this chapter, unless the context or subject matter otherwise requires:

- (1) *Charitable organization* shall include any civil and service club, benevolent, philanthropic, fraternal, patriotic, political, educational or veteran association or organization, other public spirited organization, and any nonprofit organization operated for the relief of poverty, distress or other condition of public concern within the city.
- (2) *Civic and service club* means any branch, lodge or chapter of a nonprofit national or state organization which is authorized by its written constitution, charter, articles of incorporation, or bylaws, to engage in the civic or service purpose.
- (3) *Educational organization* means any nonprofit public or private elementary, secondary, or high school, or any club, group or organization thereof.
- (4) *Fraternal organization* means a nonprofit organization within the City except for college and high school fraternities, which is a branch or lodge or chapter of a national or state organization that exists for common business, brotherhood, or other interests of its members.

- (5) *Merchandise* shall not include any livestock or agricultural product.
- (6) *Other public spirited organization* means a nonprofit organization recognized by the city council.
- (7) *Person* means any natural individual, group, organization, corporation, LLC, partnership, LLP, or other similar association or entity.
- (8) *Religious organization* means any nonprofit organization, church, body of communicants, or group gathered in common membership for mutual support and edification in piety, worship, and religious observance.
- (9) *Solicitor* means a person who goes from house-to-house or door-to-door 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 brochure or by other means, and for which delivery or performance will occur at a later time.
- (10) *Veterans organization* means any congressionally chartered organization within the state of North Dakota, or any branch or lodge or chapter of a nonprofit national or state organization within the city, the membership of which consists of individuals who are members of the armed services or forces of the United States.

21-1203. - License-Required.

It shall be unlawful for any person or for any agent, servant or employee of any person to engage in, carry on or conduct door-to-door sales for the purpose of selling or soliciting orders to sell goods, wares, merchandise, magazines, periodicals, or personal services without first obtaining a license to do so.

21-1204 – Exemptions.

The following shall be exempt from all provisions of this Chapter:

- (1) Any person delivering newspapers, fuel, dairy products, groceries or bakery goods to regular customers.
- (2) Any person selling agricultural products.
- (3) Any person who has had, or one who represents a company which has had, a prior business transaction with the property owner or tenant.
- (4) Any person conducting solicitations for charitable organizations, civic and service clubs, educational organizations, fraternal organizations, religious organizations, veterans organizations, or other public spirited organizations.

- (5) Any person distributing or selling religious, political, economic or educational information, with pamphlets, papers or periodicals where the proceeds are to be used exclusively for religious, charitable or benevolent purposes.
- (6) Any person distributing or selling personal property by charitable organizations, civic and service clubs, educational organizations, fraternal organizations, religious organizations, veterans organizations, or other public spirited organizations where the proceeds are to be used exclusively for charitable, benevolent, educational, patriotic, or other public spirited purposes.
- (7) Any person or entity conducting or participating in a nonprofit, fundraising, door-to-door sale for a public or private school, educational or religious organization.
- (8) Any person or entity conducting or participating in door-to-door sales or solicitation at nonresidential businesses.

21-1205 – Application.

Any person or organization desiring to engage in door-to-door sales for the purpose of selling or soliciting orders to sell goods, wares, merchandise, magazines, periodicals or personal services, may do so, provided that they comply with the provisions of this article and obtain a license to do so by filing an application with the city auditor. The application must be on a form provided by the city and contain the following:

- (1) Applicant's name, present residence, present home address, present business address, current telephone number, email address (if applicable), and date of birth.
- (2) A general description of the applicant's business, including the goods, wares, merchandise, magazines, periodicals or personal services that will be sold in the city.
- (3) Applicant's residence and business address for the prior two-year period, if different from the present residence and business address.
- (4) Type of business in which applicant has been engaged in the previous two (2) years.
- (5) The name and address of the organization the applicant represents or by whom they are employed.
- (6) If the applicant is not an individual, and the application is for multiple sales persons who will conduct door-to-door sales, the following information must be provided for each sales person:
 - (A) person's full name, present address, residence for the previous three (3) years;
 - (B) age, sex, height, weight, color of eyes and hair, citizenship, place of last previous employment, marital status, driver's license number;
 - (C) name, address, and telephone number of the person, firm, association, partnership,

LLC, corporation, or other entity that the individual represents or is employed by, or whose merchandise is being sold;

- (D) whether the person has ever been convicted of a felony or misdemeanor;
 - (E) whether the person has ever been previously licensed as a transient merchant or door-to-door solicitor within the previous three (3) years, and, if so, by what authority;
 - (F) whether the person's transient merchant license or solicitor's license has ever been revoked or suspended, and if so, for what cause;
 - (G) the name of the applicant's employer. All applications shall be processed and retained by the city auditor's office;
 - (H) proposed methods of delivery of merchandise, if applicable; and
 - (I) nature of business to be conducted and a brief description of the merchandise and any services offered.
- (7) A copy of the applicant's state sales tax license and if applicable, a copy of the applicant's transient merchant license.
- (8) The dates the applicant intends to conduct business in the city.
- (9) Such other information as is required by the city.

21-1206. - Standards for granting or denying applications.

- (1) An application for a license under this chapter may be denied if any of the following exist:
- (A) applicant provides any false or misleading information requested by the city as part of the application, fails to sign the application, or fails to pay the required fee at the time of application;
 - (B) the arrest or conviction of the applicant within the past five (5) years from the date of application for any violation of any federal or state statute or regulation or of any local ordinance which adversely reflects on the person's ability to conduct the business for which the license is sought in an honest and legal manner;
 - (C) the refusal to issue or the suspension or revocation of any license for the purpose of conducting business as a peddler, solicitor, transient merchant, or door-to-door sales within the past five (5) years of the date of the application;
 - (D) the applicant has a bad business reputation. Evidence of a bad business reputation shall include, but is not limited to, complaints filed against the applicant with any state or local agency, the better business bureau or other similar business or consumer rights office or agency within the preceding five (5) years of the date of application;
- (2) Within five (5) days after receiving notification the application has been denied, an applicant may file a written request for a hearing on the application before the city council. At the hearing, the applicant may present evidence in support of the application. Any interested persons shall be allowed to participate in the hearing. The city council shall either grant or deny the request for a door-to-door sales and solicitation license and notify the applicant. The decision of the city council shall be final.

21-1207. - Same-Fee.

The Grand Forks City Council shall establish by resolution a license fee for all door-to-door sales or solicitors transacting business within the city. Such fee shall be established for each day and every day during which any such door-to-door sales or solicitor shall transact business in the city or upon an annual basis expiring on December 31 of each year.

21-1208. - Same-Bond required.

- (1) Any person desiring to transact business within the City of Grand Forks as a door-to-door sales or solicitation shall, along with the application for license, give a surety bond, or deposit the cash in lieu thereof, to the city auditor in the amount of five thousand dollars (\$5,000.00) (the surety on which shall be a surety company authorized to transact business in the State of North Dakota). The contents and surety therein shall be subject to the approval of the city auditor, and be conditioned that the applicant will, in all things, conform to the laws relating to door-to-door sales and solicitation and further conditioned upon compliance with all material, oral or written statements and representations made by the applicant, the applicant's agents, representatives, or auctioneers with reference to merchandise sold or offered for sale, or faithful performance under all warranties made with reference thereto. The bond shall not be revocable nor terminate prior to the passage of two (2) years' time after the expiration of the license issued pursuant thereto.
- (2) Any person injured or damaged by any action or omission of any person licensed hereunder shall have a right of action on the bond for the recovery of monies or damages, or both.

21-1209 - License not transferrable.

No license issued under this Article shall be transferred to any person other than the person to whom the license was issued.

21-1210. - Regulation of door-to-door vendors.

- (1) License display. The licensee shall display the license when requested to do so by any property owner, tenant, customer, city official, or law enforcement officer.
- (2) Prohibited practices. The following practices shall be prohibited:
 - (A) no more than two (2) individuals shall engage in solicitation upon any premises at the same time;
 - (B) no person shall make more than one (1) solicitation call at the same premise for the same goods or services within any six-month consecutive period, without prior invitation from the occupant;
 - (C) no person shall commit any conduct constituting harassment, trespass, nuisance, theft, deceit or menacing, troublesome or otherwise unlawful activities during the course of sales activity;
 - (D) no licensee or agent thereof shall enter or attempt to gain entrance to any residence

- or business displaying a sign prohibiting solicitation;
- (E) no person shall refuse to leave any premise when requested by the owner, tenant or occupant;
- (F) no person shall make any false or misleading statements about the product or services being sold, including untrue statements of endorsement;
- (G) no person shall claim to have the endorsement of the city based on the city having issued a permit, license or certificate to that person;
- (H) no person shall solicit upon any premises prior to 9:00 a.m. or after 8:00 p.m., local time, of any day, other than upon prior invitation of the occupant of any such premises;
- (I) no person shall misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or characteristics of any merchandise or services offered for sale, the purpose of his or her visit, his or her identity, or the identity of the organization he/she represents;
- (J) no person shall make unreasonably loud noises or use any sound or amplifying devices to attract customers if the noise produced is capable of being plainly heard outside at 100' radius of the source; and
- (K) no person may solicit or sell at any private residence, building or establishment if there is in place on the premises, in an observable location, a sign or other notice bearing the words "no trespassing", "no soliciting", or other similar notice.

21-1211. - Revocation of permits.

- (1) Licenses issued under this chapter may be suspended or revoked by the mayor, for any of the following causes:
 - (A) fraud, misrepresentation or incorrect statement(s) contained in the application for a license;
 - (B) fraud, misrepresentation or false statement(s) made in the course of carrying on business;
 - (C) arrest or conviction of any violation for which granting of a license could have been denied under this section, or upon being arrested or charged for an unlawful act as described in Section 21-1206;
 - (D) any violation of this article;
 - (E) conviction of any crime involving theft or dishonesty;
 - (F) conducting the business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public;
 - (G) in the event the chief of police, city auditor, or city attorney acquires information that a permittee is engaging in fraudulent sales practices or in violation of the provisions of this Article, an order immediately suspending said license may be issued pending further notice and hearing as provided in this section;
 - (H) violation of any law relating to zoning, health, fire, building and safety requirements, or any other federal law or statutory ordinance or provision;
 - (I) failure to comply with any lawful order issued by any licensing official, law enforcement officer or any department or division of the city;

- (J) for other good cause shown which renders the licensee unfit to hold a license under this Article;
 - (K) conducting business in a way that would create a threat to the health, safety and welfare of any specific individual or the general public;
 - (L) using the license, registration or identification of another person;
 - (M) remaining on the premises of another once requested to leave; and
 - (N) operating their business or activity in any manner that a reasonable person would find obscene, threatening, intimidating, or abusive.
- (2) Notice of an order of suspension or revocation must be given in writing setting forth the grounds of such order. Notice must be sent via certified mail to the address of the licensee as stated in the application, and must be mailed within five (5) days of the revocation. Service shall be considered complete as of the date the notice is placed in the mail. An order of revocation is effective when issued.
- (3) Appeal hearing. Upon receiving notice, the license holder may appeal the suspension or revocation to the city council and shall have the right to request a hearing. If no request for hearing is received within ten (10) business days of the notice, the suspension or revocation shall be final. If a hearing is requested within the stated time frame, a hearing shall be scheduled within twenty (20) days of the date of the request. Within seven (7) days of the hearing the city council shall notify the license holder of its decision. Any decision of the city council shall be final.

21-1212. - Penalty.

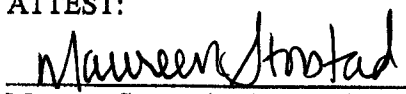
Any person who engages in business within the City of Grand Forks in violation of this Article without first obtaining a license to do so as herein provided or violates any provision of this article shall be subject to a penalty in the amount of up to five hundred dollars (\$500.00). Each day that any person carries on business in violation of the provisions hereof shall be deemed to be a separate offense and shall be punishable accordingly.

SECTION III. EFFECTIVE DATE

This ordinance shall be in full force and effect after passage and approval as provided by law.


 Michael R. Brown, Mayor

ATTEST:


 Maureen Storstad, Director
 Finance & Administrative Services
 Introduction and first reading: 03/18/2019
 Public Hearing: 04/15/2018
 Second Reading and Final Passage: 04/15/2019
 Approved: 04/15/2019
 Published: 04/22/2019