

CITY OF GEM LAKE, RAMSEY COUNTY, MINNESOTA

ORDINANCE NO. 111

**AN ORDINANCE REGULATING THE CONDUCT OF PEDDLERS, SOLICITORS,
AND TRANSIENT MERCHANTS WITHIN THE CITY OF GEM LAKE**

THE CITY COUNCIL OF THE CITY OF GEM LAKE ORDAINS:

SECTION 1. PURPOSE AND INTENT. The purpose of this Ordinance is to ensure citizens' privacy rights in their homes and protect residents from fraud and other crimes. This regulation is intended to regulate the appropriate time, place and manner of door-to-door or transient business methods employed within the City. In doing so, the Ordinance shall be applied without regard to the affiliations or messages of any person engaged in these practices. It is not the intent of this ordinance to prohibit or place any prior restraint on a person's freedom of speech, religion or association, and any conflict between this Ordinance and those interests shall be resolved in favor of the speech, religion or associative interest.

SECTION 2. DEFINITIONS. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CANVASSER. A person who goes door-to-door for the purpose of obtaining or attempting to further advocacy of a religious, social or political organization or cause through collection of signatures, donations, memberships, other financial support, or taking orders for goods to be delivered at a later date in order to raise money for the supported not-for-profit organization or cause.

DOOR-TO-DOOR. Where used, this term refers to the act of going from house to house, business to business, street to street, or any other type of place-to-place movement within the City of Gem Lake in furtherance of activity described within this Ordinance, without prior invitation by the owner or occupant of each of the places visited for that purpose.

NON-COMMERICAL DOOR-TO-DOOR ADVOCATE. A person who goes door-to-door for the primary purpose of disseminating religious, political, social, or other ideological beliefs, through personal interaction, distribution of written materials, or both.

PEDDLER. A person engaged in for-profit business with no fixed place of business, but goes door-to-door for the purpose of offering for sale, displaying for sale, selling or attempting to sell the goods, wares, products, merchandise, or other property that the person is carrying or otherwise transporting for delivery immediately upon sale. For purposes of this ordinance, the term peddler shall have the same common meaning as the term "hawker."

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

PROFESSIONAL FUNDRAISER. Any person, including a corporation or other entity, who, for compensation, performs any solicitations or other services for a religious, politician, social, or other charitable organization.

REGULAR BUSINESS DAY. Any day during which the city hall is normally open for the purpose of conducting public business. Holidays defined by state law shall not be considered regular business days.

SOLICITOR. A person engaged in for-profit business who goes door-to-door for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property, or services for which delivery or performance shall occur at a later time.

TRANSIENT MERCHANT. A person who engages in temporary or transient for-profit business in the city selling or attempting to sell goods, wares, products, merchandise or other property, and who for the purpose of carrying on such business hires, leases, occupies or uses a vehicle, trailer, boxcar, tent, portable shelter, or vacant lot for the exhibition and sale of such items, or who leases or intends to occupy a building or portion thereof for fewer than four (4) months for the exhibition and sale of such items.

SECTION 3. EXCEPTIONS TO DEFINITIONS. For the purpose of this chapter, the terms **PEDDLER**, **SOLICITOR**, and **TRANSIENT MERCHANT** shall not apply to:

3.1 Non-commercial door-to-door advocates and canvassers. Nothing within this ordinance shall be interpreted to prohibit or restrict non-commercial door-to-door advocates and canvassers. Person engaging in such activity shall not be required to register as a solicitor under Section 7.

3.2 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.

3.3 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.

3.4 Any person selling products of a farm or garden which that person occupies and cultivates.

3.5 Any person making deliveries of newspapers, newsletters, or other similar publications on an established customer delivery route, or when publications are delivered to the community at large, even if the publications contain advertising or solicitations for a for-profit business.

- 3.6 Any person conducting the type of sale commonly known as garage sales, rummage sales, or estate sales.
- 3.7 Any person participating in an organized multi-person bazaar or flea market.
- 3.8 Any person conducting an auction as a properly licensed auctioneer.
- 3.9 Any officer of the court conducting a court-ordered sale.

Exemption from these definitions shall not, for the scope of this chapter, excuse any person from complying with any other applicable statutory provision or requirement provided by another city ordinance. A person exempt from these definitions must still obey a placard posted by a property owner or tenant as described in Section 10.

SECTION 4. LICENSING; EXEMPTIONS.

4.1 ***County license required.*** No person shall conduct business as a transient merchant within the city limits without first having obtained a Transient Merchant License from Ramsey County.

4.2 ***City license required.*** Except as otherwise provided for by this Ordinance, no person shall conduct business within the City of Gem Lake as a peddler or a transient merchant without first obtaining a license from the City. Solicitors need not be licensed, but are required to register with the city pursuant to Section 8.

4.3 ***Application.*** An application for a city license to conduct business as a peddler or transient merchant shall be made at least fourteen (14) regular business days before the applicant desires to begin conducting a business operation within the city. Application for a license shall be made on a form approved by the City Council and available from the office of the city clerk. All applications shall be signed by the applicant. All applications shall include the following information:

- (a) The applicant's full legal name.
- (b) Any and all other names under which the applicant has or does conduct business, or to which the applicant will officially answer to.
- (c) A physical description of the applicant (hair color, eye color, height, weight, any distinguishing marks or features, and the like).
- (d) Full address of applicant's permanent residence.
- (e) Telephone number of applicant's permanent residence.
- (f) 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.
- (g) Full address of applicant's regular place of business, if any exists.
- (h) Any and all business-related telephone numbers of the applicant, including cellular phones and facsimile (fax) machines.
- (i) The type of business for which the applicant is applying for a license.

- (j) Whether the applicant is applying for an annual or daily license.
- (k) The dates during which the applicant intends to conduct business. If the applicant is applying for a daily license, the number of days he or she will be conducting business within the city, with a maximum of fourteen (14) consecutive days.
- (l) Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up his or her business.
- (m) A statement as to whether or not the applicant has been convicted with the last five (5) years of any felony, gross misdemeanor or misdemeanor for violating any state or federal statute or any local ordinance, other than minor traffic offenses.
- (n) A list of the three (3) most recent locations where the applicant has conducted business as a peddler or transient merchant.
- (o) Proof of any required county license.
- (p) Written permission of the property owner or the property owner's agent for any location to be used by a transient merchant.
- (q) A general description of the items to be sold or services to be provided.
- (r) Any and all additional information as may be deemed necessary by the City Council.
- (s) The applicant's driver's license number or other acceptable form of identification.
- (t) The license plate number, registration information, vehicle identification number (VIN) and physical description for any vehicle to be used in conjunction with the licensed business operation.

4.4 **Fee.** All applications for a license under this chapter shall be accompanied by the fee established in the city licensing fee schedule as it may be amended from time to time.

4.5 **Procedure.** Upon receipt of the application and payment of the license fee, the city clerk will, within two (2) 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 ten (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 4, 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 twenty (20) days of receiving notice of rejection, a public hearing before the City Council. The City Council shall hear the appeal with twenty (20) days of the date of the request for a hearing. The decision of the City Council following the public hearing can be appealed by petitioning the Minnesota Court of Appeals for a writ of certiorari.

4.6 **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.

SECTION 5. LICENSE INELIGIBILITY. The following shall be grounds for denying a peddler or transient merchant license:

5.1 The failure of an applicant to obtain and demonstrate proof of having obtained any required county license.

5.2 The failure of an applicant to truthfully provide any information requested by the city as part of the application process.

5.3 The failure of an applicant to sign the license application.

5.4 The failure of an applicant to pay the required fee at the time of application.

5.5 A conviction with 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.

5.6 The revocation with 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.

5.7 Established 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 the City against an applicant within the preceding five (5) years.

SECTION 6. LICENSE SUSPENSION AND REVOCATION

6.1 **Generally.** Any license issued under this section may be suspended or revoked at the discretion of the City Council for violation of any of the following:

(a) Subsequent knowledge by the city of fraud, misrepresentation or incorrect statements provided by an applicant on the application form.

(b) Fraud, misrepresentation or false statements made during the course of the licensed activity.

(c) Subsequent conviction of any offense to which the granting of the license could have been denied under Section 4.

- (d) Engaging in any prohibited activity as provided under Section 8 of this ordinance.
- (e) Violation of any other provision of this ordinance.

6.2 *Multiple persons under one license.* The suspension or revocation of any license issued for the purpose of authorizing multiple persons to conduct business as peddlers or transient merchants on behalf of the licensee shall serve as a suspension or revocation of each authorized person's authority to conduct business as a peddler or transient merchant on behalf of the licensee whose license is suspended or revoked.

6.3 *Notice.* Prior to revoking or suspending any license issued under this chapter, the city shall provide a license holder with written notice of the alleged violations and inform the licensee of his or her right to a hearing on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.

6.4 *Public Hearing.* Upon receiving the notice provided in section 6.3, the licensee shall have the right to request a public hearing. If no request for a hearing is received by the city clerk within ten (10) days following the service of the notice, the city may proceed with the suspension or revocation. For the purpose of a mailed notice, service shall be considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated time frame, a hearing shall be scheduled within twenty (20) days from the date of the request for the public hearing. Within three (3) regular business days of the hearing, the City Council shall notify the licensee of its decision.

6.5 *Emergency.* If, in the discretion of the City Council, imminent harm to the health or safety of the public may occur because of the actions of a peddler or transient merchant licensed under this ordinance, the City Council may immediately suspend the person's license and provide notice of the right to hold a subsequent public hearing as prescribed in section 6.4.

6.6 *Appeal.* Any person whose license is suspended or revoked under this section shall have the right to appeal that decision in court.

SECTION 7. LICENSE TRANSFERABILITY. No license issued under this chapter shall be transferred to any person other than the person to whom the license was issued.

SECTION 8. REGISTRATION.

8.1 All solicitors 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-transferrable.

8.2 Individuals that will be engaging in canvassing or non-commercial door-to-door advocacy shall not be required to register.

8.3 *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.

SECTION 9. PROHIBITED ACTIVITIES. No peddler, solicitor, canvasser, 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:

9.1 Calling attention to his or her activities or the items to be sold by means of blowing any horn or whistle, ringing any bell, crying out, or by any other noise, so as to be unreasonably audible within an enclosed structure.

9.2 Obstructing the free flow of traffic, either vehicular or pedestrian, on any street, sidewalk, alleyway, or other public right-of-way.

9.3 Conducting themselves or their business in a way as to create a threat to the health, safety, and welfare of any specific individual or the general public.

9.4 Conducting business before 8 a.m. or after 8 p.m.

9.5 Failing to provide proof of license, or registration, and identification when requested.

9.6 Using the license or registration of another person.

9.7 Alleging 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.

9.8 Remaining on the property of another when requested to leave.

9.9 Otherwise conducting themselves or operating their business in any manner that a reasonable person would find obscene, threatening, intimidating or abusive.

SECTION 10. EXCLUSION BY PLACARD. Unless specifically invited by the property owner or tenant, no peddler, solicitor, transient merchant, canvasser, non-commercial door-to-door advocate, or other person engaged in other similar activities shall enter onto the property of another for the purpose of conducting such business when the property is marked with a sign or placard that is:

- (1) At least four inches long;
- (2) At least four inches wide;

- (3) With print of at least 48 point in size;
- (4) Which states “No Peddlers, Solicitors or Transient Merchants,” “Peddlers, Solicitors, and Transient Merchants Prohibited,” or other comparable statement.

No person other than the property owner or tenant shall remove, deface, or otherwise tamper with any sign or placard under this section.

SECTION 11. PENALTY. Any individual found in violation of any provision of this ordinance, including disobedience of a property placard, shall be a guilty of a misdemeanor.

SECTION 12. SEVERABILITY. 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. EFFECTIVE DATE. This Ordinance shall take effect and be in force upon its passage and publication.

Dated: _____, 2009

Robert Uzpen – Mayor

William Short - Clerk

Summary of Ordinance 111 approved by City Council and published in the White Bear Press on _____, 2009.