

TOWNSHIP OF EVESHAM

ORDINANCE 12-6-2018

AN ORDINANCE REPEALING AND REPLACING CHAPTER 111 OF THE TOWNSHIP CODE ENTITLED "PEDDLING AND SOLICITING"

WHEREAS, the Township has reviewed Chapter 111 of the Township Code entitled "Peddling and Soliciting" and has determined that said Chapter needs to be updated to better protect the public from potentially dishonest or inappropriate vendors; and

WHEREAS, the Township makes these revisions keeping in mind an individual's right to fundamental protections under the U.S. and New Jersey Constitutions.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, by the Township Council of the Township of Evesham, County of Burlington, State of New Jersey that Chapter 111 of the Township Code of the Township of Evesham entitled "Peddling and Soliciting" be and is hereby repealed and replaced in its entirety to read as follows:

Chapter 111. PEDDLING AND SOLICITING

§ 111-1. Purpose.

The purposes of this article are to (1) deter the use of peddling or soliciting to gain access to homes or other premises for criminal purposes; (2) maintain peace, comfort, quiet and privacy for residents of the Township of Evesham while balancing the same against the opportunity for person to exercise their rights of free speech; (3) discourage unethical, dishonest and illegal business practices; (4) prevent dishonest solicitation of funds; (5) protect the safety and welfare of the inhabitants of the Township of Evesham as well as persons engaged in the below activities within the Township; and (6) preserve safety and order in and about the streets, sidewalks, businesses and public areas of the Township. All applications fees to be charged for the issuance of licenses are not to be considered as revenue, but are charges for the purpose of covering the expenses of administering this article.

§ 111-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ITINERANT VENDOR -- A person in the business of selling personal property or services who conducts his business from a fixed location but who does not intend to continue in business within the Township permanently. A proprietor of a business which is seasonal in nature who suspends business during the off-season shall not for that reason alone be considered an "itinerant vendor."

NONPROFIT ORGANIZATION – shall mean (1) any organization tax exempt under §501(c)(3) of the Internal Revenue Code; (2) any organization created under or otherwise subject to the provisions of Title 15A of the New Jersey Statutes; (3) any organization, whether or not qualified under §501(c)(3) of the Internal Revenue Code or subject to the provisions of Title 15A of the New Jersey Statutes, whose primary purpose is to benefit the school age children of the Township of Evesham; (4) any organization whose primary purpose is to advocate for religious or political causes, whether or not qualified under §501(c)(3) of the Internal Revenue Code or subject to the provisions of Title 15A of the New Jersey Statutes; or (5) any Police Department and any volunteer fire or first aid company that is located in, has a substantial membership from or serve the Township.

PEDDLER or HAWKER -- A person who sells or delivers tangible good, services or commodities from house to house, store to store, place to place or on the streets or in any public place, whether on foot or in a vehicle, whose sales are not made from one established spot, except where they are made in a street or public place, and who makes delivery at the time of his sale. A peddler selling manufactured ready-to-eat food products must also apply for and receive a food handler's license from the Township pursuant to Chapter 204 of this Code.

PERSON -- An individual, firm, partnership, corporation (either profit or non-profit), voluntary association, incorporated association, unincorporated association, society, club, trust or other similar entity or a trustee, principal or agent thereof.

SOLICITOR or CANVASSER -- A person who goes from house to house or from place to place selling merchandise by sample or by taking orders for future delivery, with or without accepting advance payments for the goods and regardless of whether advance solicitation is made by mail, telephone or personal contact. The provisions of this definition shall apply to the person who comes in personal contact with the buyer, whether he obtains the order, delivers the goods or accepts money in payment for them. "Solicitor" also means any person who goes from house to house or from place to place for the purpose of obtaining alms, contributions or subscriptions, or who does research analyses, makes surveys or opinion polls or obtains rating data or similar information, or who engages in any similar work which involves a door-to-door or place-to-place activity.

§ 111-3. License required; exceptions

A. It shall be unlawful for any person to engage in the business of canvasser, hawker, peddler, solicitor or vendor without first having secured a license therefor as herein provided.

B. The license requirements of this article shall not apply to the following:

- (1) Any nonprofit organization as defined in section § 111-2 of this article, provided that the means of identification assigned by such organization, if any, is carried by the peddler, solicitor or transient merchant. If no means of identification is assigned by such organization, the peddler, solicitor or transient merchant shall be

required to carry a bona fide means of identification, including but not limited to a valid driver's license or other government issued identification.

- (2) Any person intending to distribute noncommercial or not-for-profit handbills, pamphlets, leaflets, circulars, advertisements or printed material.
- (3) Any person (a) campaigning for any elected public office or public question, which is to be voted upon in the Township at a general election, special, primary or school board election, or in a national or State election; (b) distributing handbills, pamphlets, leaflets, circulars, advertisements or printed material with respect thereto; or (c) otherwise engaging in political speech.
- (4) Any person engaging in advocacy of noncommercial or not-for-profit causes, whether or not in connection with a larger organization, or engaging in spontaneous speech, including, but not limited, to speech between neighbors.
- (5) Any person honorably discharged from the military of the United States as defined by N.J.S.A. 45:24-9 and 24-10, possessing corresponding identification in conformity with said statute.
- (6) Any person holding a solicitation license or permit issued under any legislation of the United States government or by any state agency pursuant to statute.
- (7) Any person engaged in delivering goods, products or wares or other articles or things in the regular course of business to the premises of the person ordering or entitled to receive the same

C. Nothing in this section shall be construed as exempting the persons or organizations listed in section § 111-3(B) from compliance with the provisions of this article that do not deal with or relate to licenses, including but not limited to, the hour's restrictions set forth in section 111-11(B)

§ 111-4. Application for license.

A. All applications for licenses shall be made to the Township Clerk, at least 30 days before said license is desired, upon the forms provided by the Clerk and shall contain the following information:

- (1) The name and physical description of the applicant.
- (2) The complete permanent home and local address of the applicant.
- (3) A description of the nature of the business and the goods, services or wares to be sold.

- (4) If employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship and the authority to work in the Township
- (5) The length of time for which the right to do business is desired and the days of the week and the hours of the day within which said business desires to conduct soliciting activities.
- (6) The source of supply of the goods, products or services proposed to be sold, where such goods, products or services are located and the method of delivery.
- (7) Two recent photographs of the applicant, which shall be approximately two inches by two inches, showing the head and shoulders of the applicant in a clear and distinguished manner.
- (8) Appropriate evidence as to the good character and business responsibility of the applicant as will enable an investigator to properly evaluate such character and business responsibility.
- (9) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, other than traffic violations, the nature of the offense and the punishment or penalty assessed therefor.
- (10) If a vehicle is used, its description, including, make, model, year, color and license plate number of the vehicle and the driver's license numbers of the proposed operators.
- (11) Permission by the applicant to submit to a criminal background check.

B. Upon receipt of an application, the Township Clerk shall forward the application to the Chief of Police, or his designee, to undergo a background investigation. Said background investigation shall weigh the applicant's business, moral character and ability to properly conduct the licensed activity and the ability to protect the public. If the Police Department determines that the applicant's character, reputation, or evidence of ability to conduct the business in a responsible fashion is/are unsatisfactory, or the products, services or activities unlawful, or if false information is found to be included in the application, he shall notify the Clerk in writing and the application shall be rejected. In such cases, the applicant or licensee may file an appeal to the Township Council according to the provisions of Section 150-7.

C. The applicant shall be fingerprinted, if requested by the police officer designated by the governing body, who shall determine whether said fingerprints are necessary for proper identification, which fingerprints are to be recorded and processed immediately for classification and identification.

§ 111-5. Investigation and approval of license application.

After submission of the application, the Police Department shall make any investigation necessary and shall indicate its written approval or disapproval of the license application within 30 days after the application is filed and shall forward the license application to the Township Clerk. Upon written approval from the Police Department, the Township Clerk shall issue a license upon the payment of all required fees.

§ 111-6. License fees

A. Upon submission of the license application, the applicant shall pay to the Township a fee of \$75.00 for purposes of undertaking a background check. Upon approval of the application, the Licensee shall pay an additional \$25.00 for the license.

§ 111-7. Suspension, Revocation or refusal to grant licenses; hearing.

A. A license may be refused to any person for cause after investigation or to any person with a criminal record or may be suspended or revoked after issuance for violation of law or ordinance after notice to the applicant or licensee. A hearing before the Township Council shall be afforded to such applicant or licensee upon written request to the Township Clerk within five days of the license revocation or refusal to grant the license.

B. During the hearing, the Township Council shall consider the reasons for rejection or revocation provided by the Police Department and testimony from the investigating officer(s) if desired. The applicant or licensee shall have the right to cross-examine the investigating officer and provide independent oral testimony during the hearing. Members of the general public shall be permitted to make relevant statements for the Council's consideration.

C. In addition to the reasons for rejection or revocation provided by the Police Department, the Township Council may institute an action for revocation, after notice and hearing, for any of the following causes:

- (1) Fraud or misrepresentation in any application for a permit or license.
- (2) Fraud, misrepresentation or other dishonesty in the conduct of the licensed activity.
- (3) A violation of any provision of this chapter.
- (4) Conviction of the licensee for any felony or high misdemeanor or a misdemeanor or disorderly person's offense involving moral turpitude.
- (5) Conduct of the licensed activity, whether by the licensee himself or his agents or employees, in an unlawful manner or such a manner as to constitute a breach of the peace or a menace to the public health, safety or general welfare.

D. The Township Council shall weigh the evidence presented during the hearing and shall determine to reject, revoke or suspend the license if it is satisfied by a fair preponderance of the evidence that the licensee has failed to establish the ability to conduct the requested action without jeopardizing the public safety.

E. Reinstatement of revoked licenses.

The Township Council may instruct the Township Clerk to issue another license to a person whose license has been suspended or revoked if, after a hearing, it is satisfied by clear and convincing evidence that the acts which led to the revocation will not occur again; otherwise, no person whose license has been suspended or revoked, nor any person acting for him, directly or indirectly, shall be issued another license to carry on the same activity.

§ 111-8. License exclusive and nontransferable.

The granting of said license shall not authorize any person except the person named in said license to engage in business thereunder, and said license shall not be transferable from the person to whom issued to any other person. A separate license must be obtained by a licensee hereunder for every agent or employee working for him or it.

§ 111-9. Possession and display of license.

Every person holding a license under this chapter shall be required to carry the license with him while engaged in the business licensed. That person must produce the license at the request of any person solicited, a police officer or any official of the Township of Evesham. All automobiles, wagons, carts or other vehicles used for canvassing, hawking, peddling, soliciting or vending shall have affixed thereon a license.

§ 111-10. Content and duration of license.

A. To every person granted a license, the Township Clerk shall issue a license certificate bearing the words "Evesham Township peddler's, solicitor's and vendor's permit," together with the name of the licensee, the number of the license and the year for which it is issued.

B. The license shall be for a term of one calendar year expiring at 12:00 midnight of December 31 of the year issued, except where the license application states that the time desired is to terminate prior to December 31, and, in that event, the license shall expire at 12:00 midnight on the date requested in the application.

§ 111-11. Regulations.

Every Solicitor, Hawker, Peddler and Canvasser shall be governed by the following rules and regulations:

A. No person or vehicle shall stand or be parked for the purpose of display or selling goods, products or services on any public or private property within a distance of 200 feet from the nearest public, private or parochial school in Evesham Township during school hours. "School hours" shall mean any time during which school may be in session.

B. No person shall sell or attempt to sell in accordance with the terms of this chapter, except as set forth in the preceding subsection, before 9:00 a.m. or after 8:00 p.m. prevailing time. The aforesaid time limitation shall not apply to persons who are expressly invited into homes by the occupants thereof.

C. No person shall park his vehicle or dispensing container for a period of time longer than it takes to make a sale to a customer.

D. No person or vehicle shall stand or be parked in a fixed location for the purpose of displaying or selling goods, products or services on any public or private property where to do so is likely to cause a crowd, impede vehicular or pedestrian traffic or produce annoying sounds, voices or disturbances which interfere with the comfort of residents.

E. No person shall strew or litter or cause to be strewn or littered the public streets and highways with refuse or waste matter of any kind or to in anywise interfere with the comfort or convenience of the residents or business of the occupants or owners of adjacent property.

F. All circulars, samples or other matter shall be handed to an occupant of the property and not left on or about the same.

G. No person shall enter or attempt to enter the house of any resident in the township without an express invitation from the occupant of the house.

H. No person shall conduct themselves in such manner as to become objectionable to or annoy an occupant of any house.

§ 111-12. Exemption for wholesale dealers.

The terms of this chapter shall not be held to include the acts of persons selling personal property at wholesale to dealers in such articles.

§ 111-13. No exclusive rights to street locations; no access to public property
No licensee shall have any exclusive right to any location in the public streets. No licensee shall enter upon any public property, including Township parks for the purpose of peddling or soliciting with express written consent of the Township.

§ 111-14. Record of violations to be kept.

The Township Clerk shall maintain a record for each license issued and record the reports of violations therein.

§ 111-15 Non-solicitation Sticker

- A. Notwithstanding any other part of this chapter each resident of the Township of Evesham may make an independent choice as to whether that resident chooses to be canvassed or solicited.
- B. The Township Clerk will make available to all residents a sticker which will make reference to this section of the chapter that will declare that this resident has chosen not to be canvassed or solicited.
- C. The sticker shall be placed on the premises of the resident in a place that is visible to the public. Any person that canvasses or solicits a resident that has a sticker on display shall be in violation of this chapter.

§ 111-16. Fraud, cheating or misrepresentation.

Any licensee who shall be guilty of any fraud, cheating or misrepresentation, whether through himself or through an employee or agent, while acting as a canvasser, hawker, peddler, solicitor or itinerant vendor in the Township of Evesham or who shall barter, sell or peddle any goods or products or services, other than those specified in his application, shall be deemed guilty of a violation of this chapter.

§ 111-17. Violations and penalties.

Any person violating the terms of this chapter shall, upon conviction thereof, be subject to a fine not exceeding \$2000.00 or to imprisonment not exceeding 90 days, or both, in the discretion of the court.

ARTICLE II. REPEALER, SEVERABILITY AND EFFECTIVE DATE.

- A. Repealer. Any and all Ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistencies.
- B. Severability. In the event that any clause, section, paragraph or sentence of this Ordinance is deemed to be invalid or unenforceable for any reason, then the Township Council hereby declares its intent that the balance of the Ordinance not affected by said invalidity shall remain in full force and effect to the extent that it allows the Township to meet the goals of the Ordinance.
- C. Effective Date. This Ordinance shall take effect upon adoption in accordance with the law.

Please take notice that the ordinance published herewith was introduced and passed on first reading at the Regular Meeting of the Township Council of the Township of Evesham in the County of Burlington, State of New Jersey, held on May 8, 2018, and said ordinance will be further considered for final passage after public hearing at a meeting of said Township Council to be held on June 12, 2018, at 6:30 P.M. in the Municipal Complex, 984 Tuckerton Road, Marlton, New Jersey, at which time and place all persons interested will be given an opportunity to be heard concerning such ordinance.

Mary Lou Bergh, RMC
Township Clerk