

ORDINANCE NO. 679

AN ORDINANCE OF THE CITY OF CHOCTAW, OKLAHOMA, AMENDING SECTION 9-107 AND ADDING NEW SECTION 9-107.1, ALL PERTAINING TO ITINERANT SOLICITORS AND PEDDLERS; DECLARING REPEALER; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHOCTAW, OKLAHOMA:

**SECTION 1:** That the Code of Ordinances be and the same is hereby amended at Section 9-107 to read as follows:

§ 9-107. ITINERANT SOLICITORS AND PEDDLERS DEFINED.

A. *Definitions.*

1. *Solicitation* means conduct whereby a person, organization, society, corporation, or its agent, member, or representative solicits property, financial aid, gifts, money, or any article representing monetary value; or sells or offers to sell a product, article, tag, service, publication, ticket, advertisement, or subscription; or distributes brochures or handbills advertising any article, product or service.

2. *Person* means any individual, firm, company, partnership, corporation, society, religious sect, organization, or league, and includes any trustee, receiver, assignee, agent, or similar representative.

3. *Charitable purpose* means the solicitation of money or property, directly or indirectly, for the benefit of a charity or philanthropy, or for poor, underprivileged, needy, crippled, or handicapped persons; the teaching of patriotism or assistance to veterans or veteran's organizations; or existing educational institutions or for the establishment or endowment of educational institutions.

4. *Consumer* means an individual who acquires real or personal property, services, money, or credit for personal or family purposes.

5. *Religious organization* is an organization that is dedicated to the support of a church, religious society, or any other religious sect, group, or order.

6. *Street* means all areas dedicated to public use for public street purposes, which includes parkways, alleys, and sidewalks.

7. *Parkway* shall mean the area between the edge of the designated street and the adjacent owner's property line.

8. *Sidewalk* means any surface provided for the exclusive use of pedestrians.

9. *City* means the City of Choctaw, Oklahoma.

10. *Traffic island* means a barrier within a street or roadway to exclude vehicles, designated for the purpose of separating or directing streams of vehicular traffic.

B. *Permits.*

1. *Permit required.*

a. It shall be unlawful for any person to peddle, sell, solicit, canvass, or take orders for any services, wares, merchandise, or goods, or any article of value, including plants, flowers, paintings, novelties, painting house numbers on streets, firewood, books, magazines, photographs, or any articles for future delivery, on a sidewalk or parkway within the city or from door to door without having first obtained a permit therefor from the city.

b. Each person engaged in peddling or soliciting or selling as defined in paragraph a. above must have a permit issued under the terms of this section, and such permit shall be personal to the applicant and shall not be reproduced nor assigned nor transferred to any other person. Any such attempted transfer or reproduction shall render the permit void.

c. Each permit shall expire as of the date noted thereon, which date shall be in accordance with the provisions of this section, and such permit shall indicate the hours when peddling, solicitation and selling within the city is permitted in accordance with the provisions of this section.

d. A permit shall not be issued to any person under fourteen (14) years of age.

e. Solicitation shall be deemed completed when made, regardless of whether or not the person making the solicitation receives any contribution or makes any sale as defined herein.

2. *Permit application.* Each application for a permit required by this section shall be in writing under oath and shall set out the following:

a. Name of the applicant, with his permanent residence;

b. Name and address of the firm or persons he represents;

c. The kind, type and character of goods or services he proposes to offer for sale. Included shall be the brand name, manufacturer and distributor of goods and commodities and the name, publisher and distributor of all books, magazines or periodicals to be offered for sale;

d. Names and addresses of five (5) persons as references, excluding relatives and persons living with the applicants;

e. The names of any cities where applicant has worked within the previous thirty (30) days;

f. Whether or not applicant has ever been convicted of a felony or misdemeanor involving moral turpitude;

g. State driver's license number;

h. Social security number.

3. *Application for permit attachments.* In addition, there shall be attached to each application for a permit, the following:

a. Two recent photographic likenesses of the applicant's face, which photographs shall not exceed one (1) inch square in size;

b. A certificate or letter from the owner, president, vice-president, general manager, sales manager, assistant sales manager or district or area manager of the company for which the applicant works, sells or solicits stating that the applicant is an employee and/or agent of such company.

4. *Investigation fee.* A fee for investigation, as fixed by the city council by motion or resolution, shall be charged which shall not be prorated and shall be paid at the time the application is made and shall not be returned to the applicant, regardless of whether a permit is issued or not.

5. *Investigation of applicant.* It shall be the duty of the chief of police, or his/her designee, to investigate each applicant before issuance of a permit within two (2) weeks of receipt of application.

6. *Issuance of permit.* It shall be the duty of the city clerk, or her designee, to issue or refuse to issue such permit not later than one (1) week from the time the application was investigated by the chief of police as outlined in subparagraph 5. above. All permits shall expire within thirty (30) days from the date of issuance unless otherwise specified for a lesser time. The city clerk, or his/her designee, may refuse to grant a permit only if it is discovered, in the course of the chief's investigation, that the applicant has committed fraud, misrepresentation, been convicted of a felony or misdemeanor involving moral turpitude, or has failed to furnish items required by this section in his permit application.

7. *Permit to be carried on person while selling.* It shall be unlawful for any person to sell or solicit in the city without carrying the permit required by this section on his person while engaged in such soliciting or selling.

8. *Exhibiting permit.* Every solicitor or peddler or seller shall identify himself as a solicitor or salesman upon approaching a citizen in a public place or at a private dwelling and shall explain his purpose, whether it be direct sales, demonstration of goods, or solicitation of orders for merchandise, or any combination of such purposes, and shall be readily available to any person desiring to inspect the same.

9. *Revocation of permit.* If, after the permit required by this section has been issued, the city clerk and/or chief of police finds that the permit was obtained by any false representation, or the permit has been reproduced or transferred or assigned to another person or the applicant has led someone to believe the permit is an endorsement of the applicant's product or service by the city, or in the event of fraud or misrepresentation by the permit holder, or in the event of conviction of the permit holder of a felony or misdemeanor involving moral turpitude, or in the event the permit holder has failed to furnish the items required by this section, such permit may be revoked by the city.

10. *Appeals if permit denied.* The applicant shall have the right to appeal in accordance with Sec. 9-108(B) of this code. Such appeal, if taken, must be in writing, addressed to the municipal court, and filed with the court clerk within ten (10) days from the date of refusal. The same procedure of appeal shall apply also to permits revoked under paragraph (9) above. The municipal court shall hold a hearing on such appeal, after furnishing notice of such hearing to the applicant.

11. *Exemptions.* The following persons engaged in the activities set out in paragraphs a. through h. below in the City of Choctaw, Oklahoma shall be exempt from the terms and conditions of this ordinance:

a. Persons with religious organizations engaged in the sale or distribution of religious literature or in soliciting for contributions to such an organization or subscriptions for religious purposes, including religious newspapers, books and magazines;

b. Person seeking a contribution for a charitable purpose as provided by subsection (a)(3) hereof;

c. Other nonprofit organizations seeking charitable contributions, such as United Way, Multiple Sclerosis, American Heart Association, Muscular Dystrophy, American Cancer Society, Boy Scouts of America and similar organizations;

d. Public utility companies operating under a franchise granted by the city;

e. Commercial agents or drummers dealing with local business establishments in the usual course of business;

f. Insurance salesmen, real estate salesmen and others licensed by the state; and

g. Persons engaged in soliciting, canvassing, distribution of literature or campaigning for a political candidate or a political cause.

h. Agricultural products and/or produce grown in Oklahoma.

However, persons engaged in the activities set out in paragraphs a. through g. above in the City of Choctaw, Oklahoma exempt from the terms and provisions of Sec. 9-107 as provided hereof shall, nevertheless, be subject to the following restrictions:

1. It shall be unlawful for any person to enter or remain upon any privately owned premises within the city for the purpose of making any solicitation where there is posted a notice stating "No Solicitors" or "No Solicitations", or words of similar import, advising that solicitations are not desired.

2. It shall be unlawful for any person engaged in making the solicitations described in subsection (a) of this section to block, obstruct or hinder the free flow of traffic on any city street, or the free passage of any pedestrians on any public sidewalk in the city.

3. It shall be unlawful to make solicitations in the city later than 7:00 p.m. or earlier than 9:00 a.m. unless the solicitation is at a private residence and as the result of a request made by the occupant.

*C. Places where soliciting prohibited.*

1. It shall be unlawful for any person to peddle, solicit, hawk, sell or take orders for or offer to take orders for any item or service as listed in this section in the following places in the city:

a. On any public street, alley, traffic island or any city-owned facility;

b. On any public sidewalk or parkway, except for persons engaged in sales of or subscription solicitation of literary items.

2. It shall be unlawful for any person to block, obstruct or hinder the free flow of traffic on any street or the free passage of pedestrians on any sidewalk. No solicitation, sales, or distribution of merchandise, products, or service shall be offered or made to occupants of motor vehicles moving or stopped in traffic on a public street or other public way.

3. It shall be unlawful for any person to enter or remain upon any privately owned premises within the city for the purpose of making any solicitation where there is posted a notice stating "no solicitors" or "no solicitations" or words of similar import, advising that solicitations are not desired.

D. *Times when soliciting prohibited.* No person shall, in person or by telephone, peddle, solicit, or sell in the city from 7:00 p.m. to 9:00 a.m. unless the transaction is at a private residence and is the result of a request made by the occupant.

E. *Penalty for violations.* Any person who shall violate this section shall be guilty of an offense and shall be subject to the penalty provided for in Sec. 1-108 of the Choctaw City Code.

**SECTION 2: That the Code of Ordinances be and the same is hereby added at a new Section 9-107.1 to read as follows:**

§ 9.107.1. PEDDLER'S AND SOLICITOR'S BOND.

Notwithstanding any provision contained in Sec. 9-107, no permit shall be issued to a peddler or solicitor until a surety bond, issued by a surety company authorized to do business in the State of Oklahoma, in the amount of \$500.00 has been filed with the city clerk. Such surety bond shall run in favor of the city and shall be conditioned that the peddler or solicitor shall fully comply with all provisions of the Choctaw City Code and state laws regulating peddlers and solicitors and guaranteeing to any citizen of the city that all money paid will be accounted for and applied according to the representations of the peddler or solicitor, and further guaranteeing that the property or service purchased will be delivered in accordance with the representations made by the peddler or solicitor. Actions on such bond may be brought in the name of the city for the use and benefit of the aggrieved person or by any citizen who has been damaged by the peddler or solicitor.

**SECTION 3. Repealer. All former Ordinances or parts of Ordinances conflicting or inconsistent with the provisions of this Ordinance are hereby repealed.**

**SECTION 4. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.**

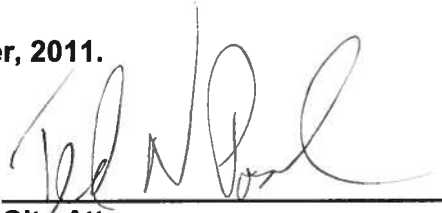
**SECTION 5. Emergency. It being immediately necessary for the preservation of the public health, peace and safety of the City of Choctaw and the inhabitants thereof, an emergency is hereby declared to exist by reason whereof, this Ordinance shall be in full force and effect from and after its passage and approval, as provided by law.**

**PASSED and APPROVED and the Emergency Clause voted upon separately and PASSED and APPROVED this 11<sup>th</sup> day of October, 2011.**

  
\_\_\_\_\_  
Mayor

ATTEST:   
  
\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM this 10<sup>th</sup> day of October, 2011.**

  
\_\_\_\_\_  
City Attorney