

TOWN OF FORTVILLE

ORDINANCE NO. 2018-6D

AN ORDINANCE OF THE TOWN OF FORTVILLE AMENDING THE ORDINANCE GOVERNING THE LICENSING OF PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS WITHIN THE TOWN

A. The Town Council of the Town of Fortville ("Council" and "Town," respectively) adopted Title XI, Chapter 110.20 of the Fortville Code of Ordinances ("Code") thereby establishing the Town's ordinances governing peddlers, solicitors, and transient merchants within the Town's limits.

B. Indiana Code § 25-37-1-11 authorizes municipalities to regulate transient merchants through the issuance of licenses.

C. The Council now finds it necessary to amend and restate Title XI, Chapter 110.20 of the Code to update the licensing procedures and regulation of peddlers, solicitors, and transient merchants to address present-day realities related to those persons conducting business in the Town.

NOW, THEREFORE, IT IS HEREBY ORDAINED by the Council as follows:

SECTION 1. Title XI, Chapter 110.20 of the Code is amended and restated in its entirety as follows:

§ 110.20 PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS

(1) Definitions.

For the purpose of this section the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"BUSINESS." The business carried on by any person who is an itinerant merchant, peddler, or solicitor as defined in this section.

"EXEMPT PERSON." An exempt person shall include the following:

- A) An individual while and to the extent he/she is engaged in a protected political speech or activity.
- B) An individual while and to the extent he/she is engaged in protected religious speech or activity.
- C) An individual engaged in the solicitation of funds and/or the sale of cookies, candies, paper products, or similar sundries for and on behalf of a not-for-profit or nonprofit organization or association that is exempt from the Indiana Gross Retail Tax.
- D) An individual, who, due to pre-exemption or applicable federal or state law is exempt from local licensing requirements.
- E) An individual that has been invited by the lawful owner or occupant of a residence or business to solicit his/her particular goods or services.

- F) Any person that has been granted direct marketing authority by the Indiana Utility Regulatory Commission pursuant to the provisions of the Indiana Code § 8-1-34-30.
- G) Any person engaged in sales, or offers to sell, during any event that is pre-approved for such sales by the Town Council.

"GOODS." Merchandise of any description whatsoever, and includes, but is not restricted to, wares and foodstuffs.

"PEDDLER."

(1) Any person who travels from place to place by any means carrying goods for sale, or making sales, or making deliveries; or

(2) Any person who, without traveling from place to place, sells or offers goods for sale from any public place within the town.

A person who is a peddler is not a transient merchant.

"SOLICITOR." Any person who travels by any means from place to place, taking or attempting to take orders for sale of goods to be delivered in the future or for services to be performed in the future.

A person who is a solicitor is not a peddler.

"TRANSIENT MERCHANT." Any person, whether as owner, agent, or consignee, who engages in a temporary business of selling goods within the town and who, in the furtherance of such business, uses any building, structure, vehicle, or any place within the town.

(2) License Requirement.

- (A) Any person who is a transient merchant, peddler, or solicitor shall obtain a license before engaging in such activity within the town.
- (B) The fee for the license required by this chapter shall be \$25.00.
- (C) No license issued under this chapter shall be transferable.
- (D) All licenses issued under this chapter shall expire 90 days after the date of issuance thereof.

(3) Application Procedure.

- (A) All applicants for licenses required by this chapter shall file an application with the Fortville Police Department. This application shall be signed by the applicant if an individual, or by all partners if a partnership, or by the president if a corporation. The applicant may be requested to provide information concerning the following items:
 - (1) The name and address of the applicant;
 - (2) (a) The name of the individual having management authority or supervision of the applicant's business during the time that it is proposed to be carried on in the town;
 - (b) The local address of such individual;
 - (c) The permanent address of such individual;
 - (d) The capacity in which such individual will act;
 - (3) The name and address of the person, if any, for whose purpose the business will be carried on, and, if a corporation, the state of incorporation;
 - (4) The time period or periods during which it is proposed to carry on applicant's business;
 - (5) (a) The nature, character, and quality of the goods or services to be offered for sale or delivered;
 - (b) If goods, their invoice value and whether they are to be sold by sample as well as from stock; or
 - (c) If goods, where and by whom such goods are manufactured or grown, and where such goods are at the time of application;
 - (6) The nature of the advertising proposed to be done for the business;

- (7) Whether or not the applicant, or the individual identified in division (A) (2) (a) above, or the person identified in division (A)(3) has been convicted of any crime or misdemeanor and, if so, the nature of each offense and the penalty assessed for each offense.
- (B) Applicants for peddler or solicitor licenses may be required to provide further information concerning the following items, in addition to that requested under division (A) above:
 - (1) A description of the applicant; and
 - (2) A description of any vehicle proposed to be used in the business, including its registration number, if any.
- (C) All applicants for licenses required by this chapter shall attach to their application the following:
 - (1) If required by the town, copies of all printed advertising proposed to be used in connection with the applicant's business;
 - (2) If required by the town, credentials from the person, if any, for which the applicant proposes to do business, authorizing the applicant to act as such representative;
 - (3) Proof of a \$500 surety bond issued to the applicant for the applicant's business;
 - 10.00 (4) \$3.00 or the current cost to the Fortville Police Department for conducting a limited criminal history check of the applicant (non-refundable); and
 - (5) \$25.00 in the form requested by the Fortville Police Department for the license, if issued. (The \$25.00 shall be refunded if the license is not issued.)
- (D) Applicants who propose to handle foodstuffs shall also attach to their application, in addition to any attachments required under division (C), a statement from a licensed physician, dated not more than ten days prior to the date of application, certifying the applicant to be free of contagious or communicable disease.

(4) Standards for Issuance.

- (A) Upon receipt of an application, an investigation of the applicant's business reputation and moral character shall be made.
- (B) The application shall be approved unless such investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, morals, or general welfare. In particular, evidence that the applicant will constitute valid reasons for disapproval of an application:
 - (1) Has been convicted of a crime of moral turpitude;
 - (2) Has made willful misstatements in the application;
 - (3) Has committed prior violations of ordinances pertaining to transient merchants, peddlers, solicitors, and the like;
 - (4) Has committed prior fraudulent acts;
 - (5) Has a record of continual breaches of solicited contracts; or
 - (6) Has an unsatisfactory moral character

(5) Revocation.

A license granted under this chapter may be revoked by the Chief of Police or his/her designee for any of the following reasons:

- (A) Any fraud or misrepresentation contained in the license application;
- (B) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the license;
- (C) Any violation of this chapter;

- (D) Conviction of the licensee of any felony, or conviction of the licensee of any misdemeanor involving moral turpitude;
- (E) Conducting the business licensed in an unlawful manner or in such a way as to constitute a menace to the health, safety, morals, or general welfare of the public.

(6) Appeal Procedure.

- (A) Any person aggrieved by a decision under § 110.20(4) or § 110.20(5) shall have the right to appeal to the Fortville Town Council. The appeal shall be taken by filing with the Council, within 14 days after notice of the decision to deny or revoke a license has been mailed to the applicant's or licensee's last known address. The notice of appeal shall include a written statement setting forth the grounds for appeal. The Council shall set the time and place for a hearing and shall, at least 10 days before the date of the hearing, mail notice of the hearing to the applicant or licensee at the applicant's or licensee's last known address.
- (B) The order of the Council after the hearing shall be final.

(7) Display of License and Identification.

- (A) Any license issued to a transient merchant under this chapter shall be posted conspicuously in or at the place named therein. In the event more than one place within the town shall be used to conduct the business licensed, separate licenses shall be issued for each place.
- (B) The Chief of Police or his/her designee shall issue a license to each peddler or solicitor licensed under this chapter. The license shall contain the words "Licensed Peddler" or "Licensed Solicitor," the expiration date of the license, and the number of the license. The license shall be kept with the licensee during such time as he is engaged in the business licensed, and:
 - (1) If the licensee conducts door-to-door sales, the license must be displayed prominently on the outermost layer of clothing worn by the licensee; and
 - (2) If the licensee utilizes a vehicle to travel around the town to conduct business, have a sign located in a conspicuous place on or in the vehicle identifying the name of the licensee and, if applicable, the name of the company or organization the licensee represents.

(8) No Trespassing.

A license issued under this Chapter DOES NOT empower the holder to ignore "No Trespassing," "No Solicitors," or similar signs or lawful requests to not trespass on private property. This includes signs posted at the entrance to subdivisions and/or individual homes and being verbally informed by the resident or other authorized person that the solicitation is unwelcome.

(9) Compliance with Other Laws.

A licensee and a licensee's employees and agents shall comply with all federal, state, and local laws and regulations while conducting business allowed under the license in the Town.

(10) Violations.

Violation of this section may result in a penalty as provided in the Town's Penalty Schedule.

SECTION 2. Any Section or Subsection of the Code that is not specifically amended or restated herein remains in full force and effect.

SECTION 3. If any provision in this Ordinance is declared invalid, the remaining provisions of the Ordinance shall remain in full force and effect.

SECTION 4. Any ordinances or provisions thereof that are inconsistent with this Ordinance are hereby superseded.

[Signature Page Follows]

Introduced and filed on the 18th day of June, 2018.

Duly ordained and passed this 2nd day of July, 2018 by the Town Council of the Town of Fortville, Hancock County, Indiana, having been passed by a vote of 4 in favor and 0 opposed.

TOWN OF FORTVILLE, INDIANA, BY ITS TOWN COUNCIL

Voting Affirmative:

Michael Frischkorn, President

Robert Holland

Tim Hexamer

Lenzy Hendrix

Robert Sterrett

Voting Opposed:

Michael Frischkorn, President

Robert Holland

Tim Hexamer

Lenzy Hendrix

Robert Sterrett

ATTEST

Melissa Glazier

Clerk-Treasurer

Alex Ziemill

Town Attorney